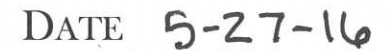




AGENDA
Committee on Public Safety
Friday, May 27, 2016 @ 3:30 p.m.
City Council Chambers, 10th Floor, City Hall

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member

1. **Call to Order**
 2. **Roll Call**
 3. **Minutes**
 - May 12, 2016
 - May 13, 2016
 4. **Public Comment on Agenda Items**
 5. **Discussion/Action:**
 - A.) DISCUSSION – Noise Ordinance Enforcement
 - B.) DISCUSSION – Medical Marihuana Licensing Ordinance
 6. **Other**
 7. **Place on File**
 - Communication from Jamaine Dickens regarding Proposed Medical Marihuana Ordinance/Drive Thru Service Windows
 8. **Adjourn**
-
- Pending – Continued discussion regarding 3200 S. Washington
 - Pending – Update on Community Police Officers with LPD
 - Pending – Discussion regarding lead





MINUTES
Committee on Public Safety
Friday, May 27, 2016 @ 3:30 p.m.
Tenth Floor, City Council Chambers – Lansing City Hall

CALL TO ORDER

The meeting called to order at 3:31 p.m.

ROLL CALL

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member - Absent

OTHERS PRESENT

Courtney Vincent, Council Administrative Assistant
Kristen Simmons, Assistant City Attorney
Lt. Hung Tran, Lansing Police Department
Deb Parrish
Gary Casteel
Cinda Eltzroth
Doug Mains, Dykema Law Firm representing Lansing Medical Cannabis Guild
Elaine Womboldt, Rejuvenating South Lansing
Hilary Vigil
Max Hutchison
Jake Rufenacht
Linda Appling
Elvis Malcolm

Minutes

MOTION BY COUNCILMEMBER HUSSAIN TO APPROVE THE MINUTES OF MAY 12, 2016 AND MAY 13, 2016 AS PRESENTED. MOTION CARRIED 2-0.

Public Comment:

Councilmember Wood asked if anyone present wished to speak on the agenda item Noise Ordinance. No one present wished to comment. Councilmember Wood asked for any attendees who wished to comment on the Medical Marihuana Ordinance to please write their name on the attendance sheet. She stated she would prefer public comment on the Medical Marihuana Licensing and Operations Ordinance after Committee discussion. If anyone could not stay for the meeting they could make their comments now.

Discussion/Action:

DISCUSSION – Noise Ordinance Enforcement

Councilmember Wood noted the gentleman who had requested information on enforcement of the City of Lansing's Noise Ordinance during the May 23rd City Council meeting was not in attendance today. The gentleman had experienced a great deal of noise on a regular basis from motorcycle and auto traffic along with loud music near his home between the hours of 2:00 a.m. and 5:00 a.m. and was concerned whether the City had a noise ordinance and if it was enforced.

Lt. Tran stated the City had a Noise Ordinance which does address noise that disturbed the peace. Lansing Police Department (LPD) officers can issue citations if they witness a violation and they will address a complaint made regarding noise, but resources were not available for an officer to watch a specific area waiting for a violation to occur. Noise ordinance is a lower propriety call but it will be responded too when resources allow.

Councilmember Wood asked how aggressively LPD enforced the ordinance and whether a sting operation could be conducted. Lt. Tran replied the ordinance was enforced the same as any other City ordinance and explained response time depended on the volume and priority of calls received. Ms. Simmons agreed with Lt. Tran. She noted warmer weather corresponded with an increase in noise complaints and doubted there were adequate resources within LPD to conduct a sting operation due to low staffing levels. Ms. Simmons also stated the City Attorney's Office followed through with prosecution of noise ordinance violations as normal.

DISCUSSION – Medical Marihuana Licensing Ordinance

Councilmember Wood stated the Committee discussed questions provided to the Interim City Attorney at the last meeting and today they would review the second draft of the ordinance line by line. Questions asked during this meeting will be answered by the City Attorney's Office at the next Committee meeting.

Page 1 - The Committee noted inconsistencies in capitalization of section titles on lines 3-14. Councilmember Wood asked whether information regarding federal laws on Medical Marihuana should be kept or researched further considering the possibility marihuana being reclassified as a Schedule 2 substance. Ms. Simmons stated it was in the best interest of the City to keep that language in the ordinance. The terms "dispensaries" and "home cultivation" on line 17 should be changed to "provisioning centers" and "home occupation" respectively for consistency throughout the ordinance. Councilmember Wood mentioned Councilmember Dunbar's suggestion to change "home occupation" to "home cultivation" during the last meeting. Lines 18 and 28 should read "Michigan Medical Marihuana Act" instead of "Michigan Marihuana Act."

Page 2 – A space is required between "(b)" and "Any" on line 5 and between "(c)" and "The" on line 6. Councilmember Hussain asked if there was any further information on the definition of "Provider" on line 12, as the entry appeared to end abruptly. Ms. Simmons said she would confirm the definitions in this section correlated with the MMMA. The Committee agreed with Councilmember Dunbar's suggestion to change "home occupation" to "home cultivation" throughout the ordinance. Ms. Simmons stated she would research the ability to use that particular phrase, and noted it might already be included in a revised draft currently being worked on by the City Attorney's Office. The phrase "primary residence" from line 17 should be changed to "principal residence" for consistency throughout the ordinance. The word "act" should be capitalized in line 23, and the second use of "Michigan medical marihuana act" should be capitalized on line 25. Councilmember Wood asked whether the mention of paraphernalia on line 28 would affect a store dealing exclusively in paraphernalia, requesting the intention of this reference compare to the locations where caregivers either grow or

exchange product. Ms. Simmons agreed and stated the language would be cleaned up. Councilmember Hussain noted line 28 should read “paraphernalia relating to”, not “paraphernalia relations to.”

Page 3 – Councilmember Hussain pointed out the inconsistency regarding the use of “principal residence” in line 6 versus “primary residence.” The word “card” should be capitalized on line 12. The Committee asked why line 23 regarding proof of operation was part of the ordinance when it was stated there would be no grandfathering of current dispensaries. Ms. Simmons replied she did not know why that requirement had been left in, and she did not think it was in the new draft. Councilmember Hussain asked for clarification on the provision in line 26 regarding caregiver licenses. Councilmember Wood explained the facility would have a license to operate that would list the caregivers at the location and caregivers would then obtain a license and would that be charge or free if they were listed on the facility license.

Page 4 – The Committee discussed “principal residence” versus “primary residence” for line 1 and wanted “home occupation” changed to “home cultivation.” Councilmember Hussain asked why the City had opted to require licenses for home cultivation when there were other options such as how the City of Ann Arbor requires registration for home cultivation instead of requiring a license. Ms. Simmons said she did not have an answer and the Committee asked her to research the issue. Councilmember Hussain asked if the statement made in lines 3-4 comported with the MMMA and the Committee requested Ms. Simmons to research the answer. The title “city clerk” should be capitalized on line 15. Councilmember Hussain suggested adding language in the provision from lines 19-21 to help the City Clerk and individuals plan for the influx of annual renewals such as requiring renewal no sooner than 90 days and no later than 30 days prior to expiration. Councilmember Wood suggested asking the City Clerk for his recommendation. The word “act” should be capitalized on line 25. A space should be added between “(f)” and “Each” on line 33.

Page 5 – The word “council” should be capitalized on line 4 and “city council” should be capitalized on line 5. The section reading “against and portion” on line 11 should read “against any portion.” The word “center” should be changed to “centers” on line 21. The additional space between “(8)” and “Specify” should be removed on line 26 for formatting consistency throughout the document. The phrase “Government issued” should be changed to “government-issued” on line 34. Councilmember Hussain asked if testing procedures would be addressed in the ordinance or a labeling requirement added to indicate no product oversight. Councilmember Wood requested Ms. Simmons to provide information on the testing element. Councilmember Hussain asked if language requiring labels to indicate whether or not edible products were made in a licensed kitchen could be added to lines 15-17, which addressed labeling requirements. Councilmember Wood said they would have to ask the City Attorney’s Office for direction because it might be an issue addressed by the Ingham County Health Department. Councilmember Wood asked if the statement required from the provision on line 39 should be notarized at the time of submission. Ms. Simmons said she would confirm whether the required statement would also include an authorization page to run a background check, which would assert that information provided is true. Councilmember Wood asked if background checks would be national or local. Ms. Simmons replied she would need to confirm whether background checks performed by LPD extended nationally.

Page 6 – Councilmember Hussain asked why the ordinances required the city be named as an additional insured party as stated in the provision on lines 5-6. He also asked about the patient education plan mentioned in line 21. Councilmember Wood clarified the language in parenthesis was a note referring to the education plan required in the first ordinance which would have been reviewed, not established, by Council. She was not sure why the City Attorney’s Office had changed it. The Committee requested the language in lines 21-22 be

cleaned up. There should be a space between “(18)” and “Patient” and the word “plan” should be capitalized on line 21. Councilmember Hussain mentioned some residents were requesting additional zoning restrictions such as prohibiting provisioning centers near churches. He asked if additional restrictions could be added or if the MMMA precluded such limitations. Councilmember Wood noted the Interim City Attorney had stated they would risk limiting access to provisioning centers if the zoning requirements were too restrictive. She also explained there had previously been a requirement addressing the minimum space allowed between two provisioning centers, which is not present in the current draft. The Committee asked the City Attorney’s Office to review that section. Councilmember Wood asked for information on why line 30 required the Council to establish a sanitation plan instead of reviewing one provided by the applicant. Councilmember Hussain questioned how the City would guard against litigation should a situation arise where the number of applicants surpasses the maximum allowed number of licensees and all meet every requirement for a license. He noted the City of Ann Arbor created a Medical Marijuana Licensing Board. Councilmember Wood replied the City Attorney’s Office is currently looking into the issue.

Page 7 – The Committee requested consistency regarding the indentation on the second line of each section. Line 3 was indented but lines 5, 7, 9, and others were not. The phrase “Fire Department” on line 2 should be changed to “Lansing Fire Department” and “Police Department” on line 7 should be changed to “Lansing Police Department”. Councilmember Wood noted the fees mentioned in line 20 could not exceed the cost of conducting business, would be set by resolution, and should be available for review by the date of the public hearing for the ordinance. Councilmember Hussain stated he was not looking to make drastic changes to the draft ordinance out of concern it would make the ordinance unenforceable. He also noted many of the patients, dispensary owners, and patient advocates he has spoken with believed the ordinance comports with the MMMA and is enforceable. The Committee requested the City Attorney’s Office reword line 39 out of concern the specification of “video recordings” was too restrictive and excluded advances in visual surveillance technology.

Page 8 – Councilmember Hussain asked Ms. Simmons to address the provision on lines 2-3, which prohibit the display or transfer of Medical Marijuana in an area accessible to the general public. Dispensary owners had indicated to him the measure would restrict their business. Ms. Simmons clarified the provision in the ordinance referred to public or common areas; Medical Marijuana could be on display in the non-public area designated for product transfer. The term “customer” in line 6 should be removed, as exchanges allowed under the MMMA are only allowed between a caregiver and a patient. Ms. Simmons agreed the term “customer” should be removed. A space is needed between “(I)” and “All” on line 18. The second semicolon should be removed at the end of line 22. Spaces need to be added between the subsection letter and the first word of the sentence on lines 23, 24, 26, and 28.

Page 9 – The Committee requested the name of the caregiver should be included as a requirement for the provision on lines 3-4. The word “center” on line 13 should be “centers.” The word “the” should be inserted before “facility” in line 10. Councilmember Wood stated the Committee needed to decide whether or not to specify hours of operation in the ordinance. Councilmember Hussain supported specifying hours of operation if the Interim City Attorney supported the provision and it is enforceable. On the question brought up during the last meeting of prohibiting green crosses, the Committee expressed more concern over the use of a symbol of a marijuana leaf. Councilmember Wood asked Ms. Simmons for additional information on the new draft she had mentioned. Ms. Simmons replied the draft took input from the line-by-line review of the first draft but she did not know when it would be available for review by the Committee.

Councilmember Wood stopped the line-by-line review of the ordinance at line 18 of page 9. The next meeting would continue the review starting at Section 1301.06 – Minimum Operations Standards for Medical Marihuana Home Occupation on line 19.

Public Comment on Agenda Items

Councilmember Wood opened the floor for public comment.

Ms. Parrish expressed concern regarding marketing by dispensaries to those who were not designated patients for a specific caregiver and stressed the need to crack down on Medical Marihuana cards not obtained by a doctor of record.

Mr. Casteel expressed concern regarding the misuse of Medical Marihuana patient cards because the cards lack a photo of the patient. He reported witnessing people passing patient cards to others for the purchase of marihuana at dispensaries. He suggested limiting the number of dispensaries to no more than three or four per ward, and he asked if a petition could be started to get rid of dispensaries in Lansing. Councilmember Wood stated the City was working diligently on an ordinance based on and comporting with current State law. Mr. Casteel asked if the City Council could require stricter monitoring of dispensaries. Councilmember Wood replied the licensing ordinance, once completed, would address those issues.

Ms. Eltzroth supported prohibiting provisioning centers near parks and churches and asked the Committee to consider adding those to the zoning requirements. She also supported uniform hours of operation for both provisioning centers and individual caregivers, suggesting the 9:00 a.m. to 5:00 p.m. hours mentioned in the ordinance. Councilmember Wood clarified that those hours pertained to inspections. Ms. Eltzroth asked the Committee to consider the impact to the quality of life for residents of the city because of the effects of the large number of Medical Marihuana establishments.

Mr. Mains stated infused products made with marihuana extract were illegal under the MMMA, making most edible products illegal under state law. He noted the State of Michigan had passed a law addressing what will happen should the federal government change marihuana to a Schedule 2 drug. He stated the Lansing Medical Cannabis Guild supported the creation of an effective and enforceable ordinance, but was concerned about portions of the draft ordinance that may conflict with the MMMA.

Ms. Womboldt expressed support for prohibiting the cultivation of marihuana in neighborhoods and for limiting the number of provisioning centers allowed in the city.

Ms. Appling expressed concern for the unintended consequences that could arise from the ordinance such as increasing the cost of the product and the potential of the restrictions creating a black market for marihuana within the city. She also expressed concern over the potential increase in arrests for petty crimes. She suggested the ordinance should be minimal in terms of nature and scope and should not cause more people to be arrested or go to jail.

Mr. Malcolm asked if the section on page 2, line 28 would affect stores exclusively selling marihuana paraphernalia and have been in business for a number of years. Councilmember Wood stated the provision was not meant to affect those businesses and the language would be clarified. Mr. Malcolm asked where caregivers were supposed to purchase additional product from for their patients if they were prohibited from transferring product in a residence. Councilmember Wood stated recent case law indicated the exchange can only be between a caregiver and a patient, not between caregivers as per the MMMA. Mr. Malcolm asked if page 5, lines 18-24 described a co-op and if they would now be legal. Councilmember Wood replied

it could pertain to a co-op and then requested Ms. Simmons research the question. Mr. Malcolm asked the Committee not to discriminate against the marihuana industry and to impose the same sanctions as they would other businesses. He mentioned the Supreme Court stated the smell of marihuana cannot be deemed offensive to the level described in the draft ordinance. Councilmember Wood noted the provisions regarding odor in the draft ordinance applied to a number of business licenses. Mr. Malcolm asked about limitations on the number of caregivers allowed at a location, the amount of marihuana they would be allowed to possess at that location, and if they would have the right to carry overage. Councilmember Wood stated those issues were currently being researched.

Council Member Wood stated the Committee would continue to move forward with the draft ordinance even if there is movement from State legislature on the bill that has been stuck in committee. The next meeting of the Committee on Public Safety is scheduled for Friday, June 10, 2016, at 3:30 p.m. and will continue the discussion of the second draft of the Medical Marihuana Ordinance. Councilmember Wood invited anyone with questions or concerns to email her so they can be passed to the City Attorney's Office prior to the next meeting.

Other:

Councilmember Wood provided an update on South Washington Park Apartments, 3200 S. Washington Ave. A meeting took place on Wednesday which included the Mayor, four City Council members, the Chair of the LHC Board of Commissioners, and representatives from HUD. The representatives from LHC informed the City the security doors had been fixed and they were considering an ID entry system for the building. It was noted a Community Police Officer would begin working in the neighborhood encompassing the building after May 28th for a three year assignment. State Police had walked through the building and provided recommendations for placement of security cameras to be installed throughout the building. Evictions are being conducted; cleaning staff has been hired to work over weekends to prevent a buildup of trash and debris. The LHC is considering applying for the RAD grant for potential funding for renovations. Another possibility instead of renovations would be tearing down the building and reformatting it. Councilmember Wood noted the Committee had originally intended to have an on-site meeting at South Washington Park, but the meeting was canceled. LHC and HUD have asked to conduct a meeting at the property and inviting the City Council to attend with the goal of looking at solutions and moving forward, HUD representatives do not the rehashing problems already brought to their attention. Councilmember Wood added LHC also wanted to try to reengage the Residents' Council and have asked for help with this from Rejuvenate South Lansing and the Old Everett Neighborhood Association. She stated the update on 3200 S. Washington would remain as pending on the agenda until a meeting has been scheduled and the date announced.

Councilmember Hussain asked if any discussion had occurred during the meeting regarding changes in leadership within LHC. Councilmember Wood stated there were no changes at LHC and the former manager at South Washington Park had been moved to a different facility. She noted that Ed Forrest now working for LHC, a former LPD Captain was also spending over 50% of his time at the building. Councilmember Hussain expressed concern over the relocating of the former property manager and then asked if there was a timeline for the meeting. Councilmember Wood stated no timeline has been provided but HUD was scheduled to meet next Tuesday with LHC regarding the recovery plan. The City of Lansing was required to sign off on the recovery agreement because the City appoints the board for the LHC, but HUD stated that the City had no liability as part of the recovery plan only LHC. Councilmember Hussain expressed concern the issues reported by residents of the building were not being addressed. Councilmember Wood replied HUD had made it clear they understood there were issues with the building, and she hoped they could encourage HUD to

allow time for the validation of issues raised by residents in order to rebuild trust between the residents and the system.

Councilmember Wood then addressed the pending update on Community Police Officers. Sgt. Matt Kreft with LPD was now in charge of the Community Police Officers and an invitation would be extended to him to attend the next Committee meeting for an update on the program.

Place on File

No action was taken on the following item to be placed on file:

- Communication from Jamaine Dickens regarding Proposed Medical Marihuana Ordinance/Drive Thru Service Windows

ADJOURN

The meeting was adjourned at 5:19 p.m.

Submitted by,

Courtney Vincent, Administrative Assistant

Lansing City Council

Approved: June 10, 2016



MINUTES
Committee on Public Safety
Thursday, May 12, 2016 @ 4:50 p.m.
Tenth Floor Conference Room – Lansing City Hall

CALL TO ORDER

The meeting called to order at 4:53 p.m.

ROLL CALL

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member - Absent

OTHERS PRESENT

Courtney Vincent, Council Administrative Assistant
Steve Japinga, Lansing Regional Chamber of Commerce
Kathy Miles, Rejuvenating South Lansing
Elane M. Womboldt, Rejuvenating South Lansing

Minutes

There were no minutes for approval.

Public Comment on Agenda Items

Councilmember Wood opened the floor for public comment after noting that there would also be an opportunity for comment on the proposed Medical Marihuana Moratorium at the Public Hearing scheduled for 5:00 p.m.

Ms. Elane Womboldt, a representative of Rejuvenating South Lansing, thanked the Committee for its work on the issue of medical marihuana.

Mr. Steve Japinga, representing the Lansing Regional Chamber of Commerce, thanked the Committee for its work on the issue of medical marihuana.

Discussion/Action:

ORDINANCE – Moratorium on the creation of new medical marihuana establishments

Councilmember Wood stated that there had not been any draft changes since it had last been presented to the Committee.

Councilmember Hussain pointed out that the word “superceeding” as written on Page 2, Line 7 of the proposed ordinance was misspelled and should read “superseding.” He also stated that the phrase “and its implications for the city” on Page 2, Line 1 should have a comma after the

word “city.” He also asked for a better definition of the phrase “starting operations” as used on Page 1, Lines 1-2.

Councilmember Wood stated that the clarification of “starting operations” would be discussed by City Council during the Public Hearing. She agreed that the two grammatical errors needed to be fixed, creating a new draft of the ordinance to be addressed by City Council during the Public Hearing.

MOTION BY COUNCILMEMBER HUSSAIN TO APPROVE THE ORDINANCE IMPOSING A MORATORIUM ON THE CREATION OF NEW MEDICAL MARIHUANA ESTABLISHMENTS.
MOTION CARRIED 2-0.

Councilmember Wood requested Ms. Vincent to create the third draft of the ordinance reflecting the two grammatical changes for the Public Hearing. She then stated that City Council had received several letters from citizens and organizations addressing the issue of medical marihuana dispensaries and the moratorium, and that those letters would be included in the record for the Public Hearing.

ADJOURN

The meeting was adjourned at 4:57 p.m.

Submitted by,

Courtney Vincent, Administrative Assistant

Lansing City Council

Approved: _____



MINUTES
Committee on Public Safety
Friday, May 13, 2016 @ 3:30 p.m.
Tenth Floor City Council Chambers – Lansing City Hall

CALL TO ORDER

The meeting called to order at 3:34 p.m.

ROLL CALL

Councilmember Carol Wood, Chair
Councilmember Adam Hussain, Vice Chair
Councilmember Kathie Dunbar, Member

OTHERS PRESENT

Courtney Vincent, Council Administrative Assistant
Joseph Abood, Interim City Attorney
Mark Dotson, Deputy City Attorney
Kristen Simmons, Assistant City Attorney
David Keeney, Appointee
Marylin Ebaugh
Jim Ott
Tim Knowlton, Cannabis Patients United
Kathy Miles, Rejuvenating South Lansing
David Brogren, Cannabis Patients United
Sheila Smith
Paul Clark
Richard Williams, President, Rental Property Owners Association of Mid-Michigan
Brian Hamilton, Puff-n-Stuff
Kevin Pybus, Dispensary Owner
Eileen Roraback
Mary Ann Prince
Ryan Moloney
Elaine Womboldt, Rejuvenating South Lansing
Nick Calkins, Nichols Law Firm representing KIND Dispensary
Maureen Smith
Nate Patrick
MaryEllen Purificato, Fairfield Place Condo Association
Joshua Covert
Stan S. Shuck
Joan Nelson, Director of Allen Center
Nancy Mahlow, President of Eastside Neighborhood Organization
Brant Johnson

Robin Schneider, National Patients Rights Association
Jeffrey Hanks, MILEgalize
Steven Monty

Minutes

MOTION BY COUNCILMEMBER HUSSAIN TO APPROVE THE MINUTES OF MARCH 31, 2016; APRIL 19, 2016; AND APRIL 22, 2016 AS PRESENTED. MOTION CARRIED 3-0.

Discussion/Action:

RESOLUTION – Appointment of David Keeney as a 2nd Ward Member to the Board of Fire Commissioners for a term to expire June 30, 2018

Mr. Keeney discussed his experience and qualifications for the appointment. He previously served on the Cable Board. He would be replacing his wife Helen Keeney who due to health issues is unable to continue to serve.

MOTION BY COUNCILMEMBER DUNBAR TO APPROVE THE RESOLUTION FOR THE APPOINTMENT OF DAVID KEENEY TO THE BOARD OF FIRE COMMISSIONERS AS THE SECOND WARD MEMBER FOR A TERM ENDING JUNE 30, 2018. MOTION CARRIED 3-0.

DISCUSSION – Medical Marihuana Licensing Ordinance

Councilmember Wood requested that those who would like to comment on the second draft of the Medical Marihuana Ordinance place their names on the sign-in sheet. Public comments would be taken at the end of the meeting to allow the Interim City Attorney the opportunity to address previously submitted questions. She did allow anyone who was unable to stay for the entire meeting the opportunity to speak before the presentation by the Interim City Attorney.

Mr. Abood introduced himself, Mr. Mark Dotson, and Ms. Kristen Simmons from the City Attorney's Office, all of whom had assisted in the research for and creation of the draft ordinance. He stated that the Michigan Medical Marihuana Act (MMMA) only allowed for the transfer of medical marihuana between a Caregiver and a patient. Caregivers were restricted to serving only five patients. Mr. Abood explained that the draft Medical Marihuana Ordinance had been drafted to be consistent with the law. Mr. Abood then addressed the 28 questions submitted to him prior to the meeting. He also advised that anyone looking to get involved in the industry consult an attorney.

Question #1) Are there any other municipalities to model the draft ordinance after besides Ann Arbor, Muskegon, and Detroit that have not been challenged by the State?

Mr. Abood stated that he was not aware of any ordinances by any community that had been challenged by the State, though there had been some case law developed by the courts that had altered ordinances such as how the 2011 ordinance for the City of Lansing had been rendered moot after the ruling of the State versus McQueen. He also noted that ordinances from Muskegon, Ann Arbor, and Port Huron had served as models for the current draft, though the MMMA has had the largest influence.

Councilmember Wood asked Mr. Abood whether there were any ordinances that had been adopted by other municipalities that were, in his opinion, in violation of the MMMA. Mr. Abood replied that other than the challenge to the Detroit ordinance by private industry, which had been dismissed, he had not heard of any other suits against other ordinances. He noted that just because an ordinance has not been challenged did not determine its legality.

Question #2) Can the language concerning Caregiver rules be clarified?

Mr. Abood stated the Committee would go through the draft line by line and that it would be their responsibility to make clarifications as necessary. He added that the definition of Caregiver provided in the draft was consistent with the MMMA.

Question #3) Does this mean Caregivers cannot grow, dispense or cultivate or do any other medical marihuana business in residential zone areas which means neighborhoods?

Mr. Abood explained that the inflection of the draft ordinance was to move transfers out of neighborhoods and into business corridors in an effort to maintain the health, welfare, and safety of the neighborhoods.

Councilmember Dunbar asked if Caregivers would be able to transport the product to their patients or if the Caregivers would be forced into a cooperative or commercial scenario to reach their patients. Mr. Abood replied that provisions under the MMMA allowed for certain limited transportation of medical marihuana by patients and Caregivers. More than one Caregiver could grow their product at a facility provided the product was in a secure area only accessible by that Caregiver. Caregivers could grow their personal product in the facilities as well. Home occupation would allow for home cultivation in restricted areas but was prohibited in a multi-family structure or apartment complex.

Councilmember Dunbar suggested changing the phrase "Home Occupation" to "Home Cultivation." She then asked if a Caregiver who had patients would be allowed to grow their 72 plants in their own home. Mr. Abood clarified that home occupation was only for personal use at home and must be kept in a secure area that only the patient could access. Councilmember Dunbar asked if that provision would be unique to Lansing. Mr. Abood replied that there were other ordinances with similar provisions such as the ordinance for Muskegon. Councilmember Wood noted that Muskegon's ordinance has been in effect for six years.

Councilmember Dunbar asked if a Caregiver could take medical marihuana to a patient who did not want to go to a provisioning center. Mr. Abood replied they could as long as they were compliant with the transportation requirements of the MMMA.

Question #4) Where can Caregivers grow their products if they are not allowed to cultivate them in their homes?

Mr. Abood referred to his answer of the previous question.

Question #5) How can the City restrict the ability of Caregivers when it seems to go against what the MMMA allows Caregivers to do?

Mr. Abood's opinion was that the draft ordinance was in line with the MMMA, and suggested those with specific questions could seek the counsel of an attorney.

Question #6) Will there be a definition for the phrase "Public Nuisance" or will a reference to where the definition can be found be made in the draft ordinance?

Mr. Abood stated such changes are the responsibility of the committee and at their discretion.

Question #7) Is there anything that would prohibit a minor without a medical marihuana registration card and without a guardian to be on site at a dispensary?

Mr. Abood stated the draft ordinance requires patients to show their registration cards from the state and a picture ID to verify the identity as a patient, and operators will have to be vigilant against minors attempting access, just as sellers of alcohol need to be.

Question #8) What findings of fact, data, and police reports were used to determine the wording of the draft ordinance?

Mr. Abood listed some sources of information including continuing education from the Lansing Police Department as well as studies conducted about medical marihuana in Lansing. He noted there were too many sources to list all of them at this time.

Question #9) Would allowing cultivation in a warehouse be against federal/state law since federal law only allows for 99 plants in one location?

Mr. Abood suggested the person who asked this question speak with an attorney. Marihuana is a Schedule 1 Controlled Substance and against Federal law.

Councilmember Wood asked if the current draft of the ordinance would allow a warehouse to hold five Caregivers, each growing their maximum allowed number of plants. Mr. Abood replied that such a scenario could draw Federal scrutiny, but it would be compliant with the MMMA provided each Caregiver had their products in private, secure areas within the facility. Councilmember Dunbar expressed concern regarding the potential for facilities to draw Federal attention and the exposure caused by having a public list of licenses issued by the City. Mr. Abood noted that upcoming potential political changes could impact the laws regarding enforcement regarding medical marihuana.

Councilmember Hussain commented on neighborhood concerns regarding home occupation.

Question #10) Why would the City require inspections when they are not required under the MMMA?

Mr. Abood replied that inspections would be required to ensure the health, safety, and welfare of the citizens of the City of Lansing.

Councilmember Dunbar asked why the City would require licenses for home occupation when such information was confidential at the State level. Mr. Abood replied that licensing home occupation would ensure activities are compliant with the MMMA and safety standards for specialized electrical equipment are maintained. Licensing and inspecting home occupation would help ensure the health and safety for the patient and their neighbors.

Councilmember Wood asked if patient registrations would be publicly accessible through FOIA. Mr. Abood replied that while the licenses would be on record, there would be aspects such as patient names and possibly addresses that would be redacted. Councilmember Dunbar expressed her concern over public access of private information, especially if license information came before Council for approval. Councilmember Wood noted that at this time license approval in the draft ordinance would occur through the City Clerk's Office.

Question #11) Can it be stated more clearly in the draft ordinance that there will be no "grandfathering" of current dispensaries?

Mr. Abood stated that issues such as this would be the responsibility of the Committee.

Question #12) You have explained the language that in legal terms means there will be no grandfathering. Could you please list: There will be NO Grandfathering of any opened facility on/or before the effective date of this ordinance?

Mr. Abood reiterated that issues such as this would be the responsibility of the Committee.

Question #13) How does the ordinance apply to rental property?

Mr. Abood explained Caregivers must have their growing operation in business or industrial corridors and cannot grow in their primary residence. A principle resident of a rental property may grow for their own consumption in a secure locked area only accessible by the patient

and cannot exceed 25 percent or 300 feet, whichever is less, of their residence. Any home grow that is detectable from the curtilage of the property, whether it is from odor, light, or heat output, would be in violation of the ordinance.

Question #14) Will a grow facility located in a rental be inspected similarly to those in a rental home?

Mr. Abood replied that rental facilities in industrial areas and business corridors would be inspected, as would home occupation in rented residential units, but the requirements of the inspections would vary based on the type of grow and the location.

Councilmember Wood asked if home occupation would be inspected in addition to regular rental inspections performed by Code Compliance. Mr. Abood replied that they could, but the mechanism for enforcement was still being decided.

Question #15) Will residents of a rental unit/condo who are having problems with odor and other issues related to marihuana be able to seek assistance using the Home Cultivation Operation if they are in a residential zoned area?

Mr. Abood stated there is language in the draft ordinance against the use or cultivation of marihuana being evident beyond the curtilage of the property. In addition, Caregivers will not be allowed to grow or transfer marihuana from their primary residence.

Question #16) Can language be included that addresses establishments that abut neighborhoods?

Mr. Abood explained this was the purpose of the zoning regulations in the draft ordinance.

Question #17) Can language be included that addresses perimeter requirements around schools, churches, hospitals, etc.?

Mr. Abood mentioned the Planning and Neighborhood Development Department had conducted a study of Overlay Districts that showed there would only be two locations within the Overlay Districts available for dispensaries should dispensaries be prohibited within 1,000 feet of a church. He stressed the need for less restrictive zoning to prevent transfers from being driven underground and back into the neighborhoods.

Question #18) Can schools, churches, hospitals, etc. be prohibited from “signing off” on allowing dispensaries/cultivation centers to be located near their facilities (such as is allowed for liquor licenses)?

Mr. Abood did not know if that was allowed for liquor licenses. The Committee would address any special requirements it deems necessary for the ordinance.

Question #19) Will green crosses in advertising be prohibited?

Mr. Abood stated that policy determinations will be decided by the Committee.

Question #20) Why was Hydroworld raided by the FBI, the State Police, and Lansing Police; and why did you let that happen and no other shops were hit?

Mr. Abood stated his office has nothing to do with the action of the FBI or State Police, and the Lansing Police Department does not consult the City Attorneys’ Office on open investigations. The MMMA grants certain immunities to patients with debilitating diseases who are licensed by the State and Caregivers who are licensed by the State, and the ordinance is being drafted in such a way so Caregivers and patients can avail themselves to the immunities prescribed by law.

Question #21) What happens if there are four patients who live at the same address and each is growing his/her marijuana in a residentially zoned area?

Mr. Abood stated it would be allowed under the ordinance provided each person has their own secured, locked growing facility that combined covers no more than 25 percent or 300 feet, whichever is less, of the primary residence.

Question #22) Who will be doing the background checking and will this information be made available to the public?

Mr. Abood stated the Departments responsible for inspections and enforcement was still being determined, and the information available to the public would be tempered by privacy concerns for the individuals. Councilmember Wood noted that the draft ordinance mentioned background checks being performed by the Lansing Police Department. Mr. Abood clarified that criminal background checks were required to be conducted by the LPD, but it had not yet been determined which Department would handle other, non-criminal background checks. The draft ordinance proposed prohibiting felons from participating in the marijuana industry.

Question #23) Does this set a limit on how many can be at one business address?

Mr. Abood explained that a provisioning center could have more than one Caregiver working out of that establishment to supply their patients and a cultivation center could have more than one Caregiver growing out of that facility provided they comply with requirements of the MMMA.

Question #24) Since medical marijuana is illegal in Federal law, how can a non-profit Internal Revenue 501(c)(3) be legal? Or maybe that is not what the language in this area means? Please clarify.

Mr. Abood stated he did not know if the draft ordinance contemplated 501(c)(3) organizations and advised the person asking that question to speak with an attorney.

Question #25) Please add preschool, daycare and churches to the language, because this is a city ordinance and we are allowed to have more coverage for protection of our citizens.

Mr. Abood stated the Committee would address any special requirements for social facilities.

Question #26) Does the definition of “multi-family dwelling” on Page 10, Line 23(b) include, town houses, apartment buildings and condos?

Mr. Abood stated types of residential defined as multi-family dwelling would warrant further discussion. The original intention had been to only allow home occupation in a single family detached home that serves as a patient’s primary residence.

Question #27) Can the language that is in the current ordinance be adopted with regards to the following: “One thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; a public or private college, community college, or university; a playground; a church or other structure in which religious services are conducted; a child care organization required by the Child Care Organizations Act, PA 116 of 1973, to be licensed or registered by the Michigan Department of Human Services; or a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., are offered”?

Mr. Abood stated the language could be added, but it would so narrowly define the allowable locations as to potentially push the operation back underground.

Question #28) Can language be added to require testing of marihuana?

Mr. Abood replied it could be added and that it could be an important component of the ordinance. He reiterated such special requirements will be decided by the Committee.

Councilmember Dunbar suggested changing the term “facility” to “cultivation center” and to actually state in the definition that cultivation centers may also be provisioning centers. She asked if a specific type of establishment had been intended for the third definition, which referred to whatever facility is used to provide assistance. Mr. Abood answered that no specific type of establishment had been in mind.

Councilmember Dunbar asked if the license would be given to the Caregiver or to the property. Mr. Abood explained that the facility would be licensed and then the Caregivers would self-report their compliance with the MMMA to allow the City to keep track of which Caregivers or patients were being assisted in the facilities. He noted that the City Council would determine any fees involved.

Councilmember Hussain said he would wait to ask his questions until the Committee went through the ordinance line by line.

Public Comment on Agenda Items

Councilmember Wood opened the floor for public comment.

Mr. Ott expressed his support for removing medical marihuana cultivation and transfers from the neighborhoods.

Mr. Knowlton expressed his opposition to the limitations the draft ordinance imposed on the rights of patients. State law did not require Caregivers to grow in a separate facility from their home. Requiring them to rent a warehouse to serve five patients was not a lucrative business model and could draw Federal attention. Mr. Knowlton asked if any independent attorney had been allowed to participate in the discussion to draft the ordinance.

Councilmember Wood clarified that the City Attorney was the one responsible to the City Council for legal questions. Other attorneys had addressed the Committee and the City Attorney has reached out to others in drafting the ordinance.

Ms. Miles suggested that a City Council Member be required to recuse him or herself from voting if he or she is a Caregiver growing medical marihuana in their own home. She also informed the Committee of a medical marihuana dispensary that had opened on Mt. Hope.

Ms. Smith requested the Committee consider any impact the other businesses in the business corridors might face as a result of the provisioning centers. She also asked that provisioning centers be prohibited within 1,000 feet of any substance abuse treatment or rehabilitation center.

Mr. Williams discussed the problems rental property owners have renting a unit previously occupied by a medical marihuana patient.

Ms. Roraback asked whether a cap would be enforced and whether the ordinance would limit the hours of operation. She also asked the Committee to consider neighborhoods located close to business corridors.

Councilmember Wood noted that there was a provision in the current draft for a cap and for hours of operation but at this time no determination has been made as to what Committee will do.

Mr. Moloney suggested the Committee move slowly through the drafting process to ensure the creation of a meaningful ordinance and suggested medical marihuana from an economic standpoint.

Ms. Womboldt spoke in support of moving the Caregivers out of the neighborhoods. She asked for considerations in air quality control such as requiring an exhaust system for provisioning centers.

Mr. Patrick suggested educating the community on ways to mitigate the problematic aspects of medical marihuana cultivation, such as the odor emissions. He noted the draft ordinance, if approved, would make the current dispensary model present in the City defunct and illegal, which would result in transactions being pushed back underground.

Mr. Abood specified only transfers between a Caregiver and his/her patient are allowed under the MMMA, which means most of the dispensaries in the City of Lansing are illegal.

Ms. Purificato expressed concern over the effects of medical marihuana home occupation and use on property values rights of the patients superseding the rights of other residents. She asked the Committee to consider condos as multi-family dwellings.

Mr. Abood noted that residents of the City of Lansing had voted in favor of allowing people over the age of 21 to possess up to an ounce of marihuana for their personal use on their private property. The growing of marihuana on personal property was not included on that ballot initiative. Ms. Purificato clarified that their problem pertained to people growing in their basement.

Mr. Covert expressed his professional objections to the limitations placed on patients and Caregivers. He suggested that an ordinance be written pertaining to regulating indoor gardening instead of singling out medical marihuana. He suggested using ordinances already on the books to address issues, using the example of the nuisance ordinance to address odor issues.

Councilmember Wood noted that the area allowed for home occupation within a residence was already outlined under the current Medical Marihuana Ordinance. The current draft ordinance intended for a patient growing their own product to be considered home occupation.

Mr. Shuck expressed opposition to licensing fees, possible HIPAA violations, and inspections for home occupation. He noted the ordinance stated there would be no transfers in residences but did not specify Caregiver or patient residence transfers. He objected to testing being mandatory, suggesting the City require labels stating the product is untested. He then expressed concern at the proliferation of dispensaries prior to the adoption of the moratorium.

Ms. Nelson expressed support for a cap on the number of dispensaries and limiting the hours of operation in consideration of all sectors of a neighborhood. She asked if background checks would extend State lines, and suggested that background checks apply nationally. She asked why the Health Department was not involved with the inspection process. She also mentioned a new dispensary that appeared to be operational.

Councilmember Wood stated any complaints about a medical marihuana dispensary should be submitted using a Citizen Complaint Form or by calling the main line for the City Attorney's Office.

Ms. Nelson asked what criteria would be used to determine whether a dispensary had been open prior to the moratorium taking effect.

Mr. Abood replied that a number of different criteria will be used. It was up to the operator to supply sufficient evidence of the operation prior to the moratorium. Mr. Abood asked that any complaints be submitted to his office in writing using the Citizen Complaint Form. If anyone had questions on how to find the form online or required assistance obtaining a form they could call the main number for the City Attorney's Office.

Ms. Mahlow expressed support of stricter zoning regulations including prohibiting provisioning centers from locating within 1,000 feet of churches and schools. She requested an establishment such as a church or a school not be allowed to write a letter of support to allow a provisioning center closer than the 1,000 foot boundary as currently allowed for a liquor store or brewery. She asked why marihuana was being treated differently than alcohol, and suggested modifying the alcohol ordinance to fit for medical marihuana.

Mr. Johnson asked if there was currently a Home Occupation Act in effect in the City of Lansing that included language regarding medical marihuana.

Councilmember Wood replied there was, but it would be repealed when the new ordinance was passed.

Mr. Johnson noted that requiring each Caregiver to rent or purchase a building to service patients would affect Caregivers tending to immediately family members in addition to the intended effect on Caregivers serving multiple patients. He asked whether all offensive/nuisance odors would be treated the same as marihuana odor. He also asked who was responsible for the patient education plan and what that plan would be.

Ms. Robin Schneider expressed her concerns regarding the draft ordinance. She stated the MMMA did not require inspections for patients or Caregivers, and it was dangerous to put multiple growers into one building because it would attract Federal attention due to it being illegal to have more than 99 plants at one address. She opposed requiring Caregivers be licensed in the City since they were already licensed and their background checked by the State. She suggested licensing the facility and requiring the facility to operate within State law, but not licensing individuals as their identities were protected under the MMMA.

Mr. Hanks suggested removing the requirement to license Caregivers and patients. He noted that Page 4, Section 3 of the draft would prevent a person being the Caregiver to an immediately family member in their home such as a parent being Caregiver to a child. He also noted that the requirement for facilities to have continuous video surveillance of the entire facility, taken at face value, would actually include monitoring the restrooms. He suggested the Committee move slowly, continue fastidiously analyzing the draft ordinance, and handle regulation through Code Enforcement and the Lansing Police Department.

Mr. Pybus expressed his opposition to the discriminatory nature of the requirements on marihuana odor and asked the Committee remember that people who reside outside of the City of Lansing are important as well. He asked the Committee keep in mind the number of patients in the area compared to the limitation of only five patients per Caregiver when setting the cap on the number of dispensaries.

Councilmember Wood stated that the City Attorney had confirmed it would be permissible to include exceptions in the ordinance pertaining to Caregivers assisting for a family member. The Committee would look into that issue further.

Mr. Brogren expressed his opposition provisions within the draft he believed went against the provisions of the MMMA.

Mr. Abood stated it was his professional opinion that the draft ordinance was within the bounds of the MMMA.

Mr. Hamilton stated he did not understand the provision on Page 6, Section 13 pertaining to proof of an insurance policy. He also suggested the Committee not set a cap on the number of dispensaries in the city.

Mr. Monty expressed his opposition to requiring Caregivers purchase or rent a business or industrial space for their operations it would added an unnecessary cost for the Caregiver and could potentially be viewed as discrimination against this particular demographic.

Councilmember Wood stated that the City Council had asked the City Attorney about the ability to enact the ordinance created in 2011, which was previously stated as not enforceable. They also tasked the City Attorney with creating an ordinance that is enforceable. She then stated that the Committee would address the second draft of the ordinance line by line at the next meeting of the Committee on Public Safety, which is scheduled for Friday, May 27, 2016 at 3:30 p.m.

ADJOURN

The meeting was adjourned at 6:20 p.m.

Submitted by,

Courtney Vincent, Administrative Assistant

Lansing City Council

Approved: _____

654.07. - Prohibited noises generally.

No person shall make, or continue, cause or permit to be made, verbally or mechanically, any unnecessary noise disturbance. Noncommercial public speaking and public assembly activities conducted on any public space or public right of way shall be exempt from this section, except as otherwise provided herein.

The following acts, and the causing thereof, are hereby declared to be violations of this section:

- (a) *Sound Production and Reproduction Systems.* The playing, using or operating, or permitting the playing, using or operating, of any television or radio receiving set, musical instrument, phonograph or other machine or device for producing, reproducing or amplifying sound in such a manner as to create a noise disturbance, or at any time with a louder volume than is necessary for convenient hearing for the persons who are in the room, chamber, vehicle or other place in which such an instrument, machine, set or device is operated and who are voluntary listeners thereto. The operation of any such television or radio receiving set, instrument, phonograph, machine or device between 11:00 p.m. and 7:00 a.m. of the following day in such a manner as to be plainly audible at a distance of fifty feet from the building, structure, vehicle or other place in which it is located shall be prima-facie evidence of a violation of this section. This subsection shall not apply to noncommercial speech.
- (b) *Loudspeakers; Public Address Systems.*
 - (1) The using or operating for any noncommercial purpose of any loudspeaker, public address system, musical instrument or similar device between 10:00 p.m. and 8:00 a.m. of the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary; or
 - (2) The using or operating for any commercial purpose of any loudspeaker, public address system or similar device so as to be audible in residential areas or in a noise sensitive zone.
- (c) *Street Sales.* Offering for sale or selling anything by shouting or outcry within any residential area of the City, except in connection with auction sales;
- (d) *Animals and Birds.* Owning, possessing or harboring any bird or other animal which frequently or for continued duration makes sounds which create a noise disturbance across a residential real property boundary or within a noise sensitive zone;
- (e) *Loading and Unloading.* Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials or similar objects between 10:00 p.m. and 7:00 a.m. of the following day in such a manner as to cause a noise disturbance across a residential property boundary or within a noise sensitive zone;
- (f) *Motor Vehicle Repairs and Testing.* Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary;
- (g) *Construction.* Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work between 8:00 p.m. and 7:00 a.m. of the following day on weekdays, or at any time on weekends or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work of public service utilities or by a temporary or special permit issued pursuant to Section 654.10 or 654.11;
- (h) *Places of Public Entertainment.* Operating or playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in any place of public entertainment so as to produce a maximum sound level of fifty-five dBA on a residential real property boundary;

- (i) *Domestic Power Tools.* Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool or similar device used in residential areas between 8:00 p.m. and 8:00 a.m. of the following day so as to cause a noise disturbance across a residential real property boundary;
- (j) *Burglar Alarms.* Sounding or permitting the sounding of any burglar alarm or other alarm or any safety or warning device on any building or motor vehicle, unless such burglar alarm terminates its operation within fifteen minutes of its being activated. Any vehicle upon which a burglar alarm has been installed shall prominently display the telephone number at which communication may be made with the owner of such motor vehicle. All burglar alarms which emit a sound which is clearly audible at any residential property line shall be equipped and required to automatically shut off the sound not later than fifteen minutes after it has begun.
- (k) *Air Conditioning and Air Handling Devices.* The operation of air conditioning, air handling devices, refrigeration devices or other compressors causing a continuous sound level in excess of fifty-five dBA measured at any property line in residential areas. This subsection shall not apply if the sound from the air conditioner or air handling device produces less than a three dBA increase in the sound level that exists in the absence of such sound.

(Ord. No. 739, 12-22-86)

654.08. - Exceptions to chapter.

The following activities and uses shall be exempt from the noise level regulations established by this chapter:

- (a) Noises of public or governmental safety signals, warning devices and emergency relief valves when used as intended for warnings in case of emergency or danger or when tested, and noises of fire alarms;
- (b) Noises resulting from any authorized police, fire or emergency vehicle when responding to an emergency call or acting in a time of emergency;
- (c) Noises resulting from emergency work. Emergency work shall be work which is necessary to restore property to a safe condition following a public calamity or accident, or work required to protect persons or property from an imminent exposure to danger.
- (d) Any noise resulting from activities of a temporary duration, permitted by law and for which a temporary or special permit has been granted in accordance with Section 654.10 or 654.11;
- (e) Any aircraft operated in conformity with or pursuant to Federal law, Federal air regulations and air traffic control instruction and used pursuant to and within the duly adopted Federal air regulations;
- (f) Noise from church bells, chimes or churches, except between 12:00 midnight and 6:00 a.m.;
- (g) Noise from construction activity, except such noise as is specifically prohibited by this chapter;
- (h) Noise resulting from the repair of public utilities;
- (i) Noise resulting from the operation of snow removal equipment when being used for or in connection with snow removal; and
- (j) Noise resulting from a City sponsored cultural, ethnic or community activity open to the public.

(Ord. No. 739, 12-22-86; Ord. No. 758, 6-29-87)

654.12. - Regulations.

The administration may establish regulations governing permits, exceptions and appeals provided for in this chapter. No such regulation shall be effective until it is approved as to form by the City Attorney and approved by Council.

(Ord. No. 739, 12-22-86)

654.13. - Additional violations.

Except as provided in Section 654.08, no person shall:

- (a) Make or continue, or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City;
- (b) Discharge the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle into the open air, except through a muffler or other device which will effectively prevent loud or explosive noises;
- (c) Use any drum, loudspeaker or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show or sale or display of merchandise; or
- (d) Knowingly permit a minor under his or her guardianship, custody or control to violate any noise regulation contained in this chapter.

(Ord. No. 739, 12-22-86)

654.14. - Remedies cumulative.

No provision of this chapter shall be construed to impair any common law, statutory or other cause of action, or legal remedy therefrom, of any person, for injury or damage arising from a violation of any of the provisions of this chapter or of any other law.

(Ord. No. 739, 12-22-86)

654.99. - Penalty.

Editor's note— See Section 202.99 for general Code penalty if no specific penalty is provided.

*City of Kalamazoo, MI**Tuesday, May 24, 2016*

Chapter 21. Noise

Article I. In General

§ 21-1. Findings and declarations of fact; purpose of chapter.

[P&L Code § PL201A]

A. The City Commission hereby finds and declares that:

- (1) The making or creation of excessive or unusually loud noises within the limits of the City is a condition which has existed for some time and the extent and volume of such noises are increasing;
- (2) The making, creation or maintenance of such excessive or unusually loud noises, which are prolonged, unusual or unreasonable in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety and welfare of the residents of the City; and
- (3) The necessity in the public interest for the provisions and prohibitions hereinafter contained in this chapter is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and the peace and quiet of the inhabitants of the City of Kalamazoo.

§ 21-2. Definitions.

[P&L Code § PL202A.2]

As used in this chapter, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

AMBIENCE

Surrounding or background noise associated with a given environment, usually a composite of sounds from many sources.

ANY PERSON

When referring to persons intended to be protected by the provisions of this chapter, shall mean a reasonable person of normal sensitiveness.

dB(A)

The sound pressure level in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication ANSI S1.4-1971, for a Type 2 Instrument.

DECIBEL

A unit used to express the magnitude of sound pressure and sound intensity. The difference in decibels between two sound pressures is 20 times the common logarithm of their ratio. In sound pressure measurements, the sound pressure level of a given sound is defined to be 20 times the common logarithm of the ratio of that sound pressure to a reference pressure of $2 \times 10^{-5} \text{ N/m}^2$ (Newtons per meter squared). As an example of the effect of this formula, a three-decibel change in the sound pressure level corresponds to a doubling or halving of the sound intensity, and a ten-decibel change corresponds to a tenfold increase or a decrease to 0.10 the former sound intensity.

HARMONIC OR PURE TONES

Sounds which have a specific frequency or pitch associated with them.

IMPULSIVE SOUNDS

Very short duration, although they may be repeated at regular or irregular intervals, such as gun shots or automobile backfire sounds.

§ 21-3. Enforcement of chapter.

[P&L Code § PL202A.4]

In addition to the employees and officers regularly required to enforce City ordinances generally, the City Manager may assign duties of enforcement of this chapter to personnel trained in noise-control techniques and procedures and equipped with calibrated sound level meters of a standard design.

§ 21-4. Exemptions from chapter.

[P&L Code §§ PL201A, PL204A]

A. The provisions of this chapter shall not apply to:

- (1) Law enforcement or governmental agencies when engaged in activities authorized by law.
- (2) Emergency work performed for the safety, welfare and public health of the citizens of the City. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or potential danger.
- (3) Warning devices emitting sound for warning purposes, as authorized by law.
- (4) Parades, fairs, circuses and other similar public entertainment events, sanctioned sporting events, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above.

- (5) Flights of aircraft which are in all respects conducted in accordance with, or pursuant to, federal law, federal air regulations and air-traffic-control instructions.

§ 21-5. Violations of chapter as nuisances.

[P&L Code § PL206A]

In addition to the penalty imposed for a violation of this chapter, the operation or maintenance of any noise source in violation of any provision of this chapter, which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area, shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

§ 21-6. General prohibition.

[P&L Code §§ PL202A.1, PL202A.3]

- A. It shall be unlawful for any person to make or cause to be made or continued any excessive or unusually loud noise or any noise, measured or unmeasured, which either disturbs, injures or endangers the comfort, repose, health, peace or safety of any person within the limits of the City.
- B. The acts enumerated in the following sections of this chapter are declared to be loud, disturbing noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.

§ 21-7. Noise limitations based on dB(A) criteria.

[P&L Code § PL202A.4; amended 4-20-1981 by Ord. No. 1223]

- A. Generally. Any noise in excess of the maximum decibel limits according to the regulations set out in this section shall be deemed to be prima facie evidence of a violation of § 21-6.
- B. Noise from private property. The maximum decibel limits on noise originating from private property shall be as set forth in the following table. Noise will be measured at the boundaries of the lot. To be in violation, the source or sources of noise must be identifiable in relation to the ambience, and must exceed the limitations established for the zoning districts and times listed below:

Zones	dB(A) Maximum Limitations	
	7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
Residential 7, 7A, 8	50 dB(A)	45 dB(A)
Commercial 4, 5, 5A, 6	55 dB(A)	50 dB(A)
Industrial 1, 2, 3	75 dB(A)	70 dB(A)

The following provisions shall apply to the interpretation and enforcement of this subsection:

- (1) At boundaries between zones, the lower of the dB(A) levels shall be applicable.
- (2) Harmonic or pure tones and periodic or repetitive impulsive sounds shall be in violation when such sounds are at a sound pressure level of five dB(A) less than those listed above.
- (3) Construction projects shall be subject to the maximum permissible noise levels specified for industrial districts for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority, or if no time limitation is imposed, then for a reasonable period of time for completion of the project.
- (4) Noises caused by home or building repair and ground maintenance are excluded from these limits between the hours of 7:00 a.m. and 10:00 p.m., provided they do not exceed 74 dB(A) at the property line or at a distance of 50 feet (15 meters), whichever is furthest from the source of the noise.
- (5) All railroad rights-of-way shall be considered as industrial districts for the purpose of this subsection and the operation of trains shall be subject to the maximum permissible noise levels for such district. The allowable noise levels at the boundaries of the right-of-way shall be those appropriate within industrial districts, without regard for the zone of the abutting property.

C. Noise from motor vehicles:

- (1) Definitions.
 - (a) For the purpose of this subsection, the following terms shall have the meanings indicated:

COMBINATION VEHICLE

Any combination of truck, truck tractor, trailer, semitrailer or pole trailer used upon the highways or streets in the transportation of passengers or property.

DECIBEL

A unit of sound level on a logarithmic scale measured relative to the threshold of audible sound by the human ear, in compliance with American National Standards Institute standard S1.1-1960.

DECIBELS ON THE A-WEIGHTED NETWORK or dB(A)

Decibels measured on the a-weighted network of a sound level meter, as specified in American National Standards Institute standard S1.4-1971.

EXHAUST SYSTEM

The system comprised of a combination of components which provides for enclosed flow of exhaust gas from engine parts to the atmosphere.

FAST METER RESPONSE

The meter ballistics of meter dynamic characteristics as specified by American National Standard standard S1.4-1971.

GROSS VEHICLE WEIGHT RATING

The value specified by the manufacturer as the loaded weight of a

vehicle.

MAXIMUM NOISE

The noise emitted from a vehicle during that manner of operation which causes the highest dB(A) level possible from that vehicle.

MUFFLER

A device for abating the sound of escaping gases of an internal combustion engine.

NOISE

Any sound.

TOTAL NOISE

Noises radiating from a vehicle but does not include noises emitted from a horn, siren, bell or other similar device of an authorized emergency vehicle.

- (b) For purposes of this subsection, a motor vehicle does not include a special mobile equipment.
- (2) Prohibitions.
 - (a) A motor vehicle, while being operated on a highway or street, shall be equipped with an exhaust system in good working order to prevent excessive or unusual noise and shall be equipped to prevent noise in excess of the limits established in this subsection.
 - (b) A motor vehicle shall not be operated or driven on a highway or street if the motor vehicle produces total noise exceeding one of the following limits at a distance of 50 feet except as provided in Subsections C(2)(b)[2][c] and C(2)(b)[3][c]:
 - [1] A motor vehicle with a gross weight or gross vehicle weight rating of 8,500 pounds or more, combination vehicle with gross weight or gross vehicle weight ratings of 8,500 pounds or more:
 - [a] Ninety dB(A) if the maximum lawful speed on the highway or street is greater than 35 miles per hour.
 - [b] Eighty-six dB(A) if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 - [c] Eighty-eight dB(A) under stationary run-up test.
 - [2] A motorcycle or a moped:
 - [a] Eighty-six dB(A) if the maximum lawful speed on the highway or street is greater than 35 miles per hour.
 - [b] Eighty-two dB(A) if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 - [c] Ninety-five dB(A) under stationary run-up test at 75 inches.
 - [3] A motor vehicle or a combination of vehicles towed by a motor vehicle not covered in Subsection **C(2)(a)** or **(b)**:

- [a] Eighty-two dB(A) if the maximum lawful speed on the highway or street is greater than 35 miles per hour.
 - [b] Seventy-six dB(A) if the maximum lawful speed on the highway or street is not more than 35 miles per hour.
 - [c] Ninety-five dB(A) under stationary run-up test 20 inches from the end of the tailpipe.
- (c) A person shall not operate a vehicle on a highway or street if the vehicle has a defect in the exhaust system which affects sound reduction, is not equipped with a muffler or other noise-dissipative device, or is equipped with a cutout, bypass, amplifier or a similar device.
- (d) A person shall not modify, repair, replace or remove a part of an exhaust system, if the act causes the motor vehicle to which the system is attached to produce noise in excess of the levels established by this subsection, or operate a motor vehicle so altered on a street or highway.
- (e) A person, either acting for himself or herself or as the agent of employee of another, shall not sell, install or replace a muffler or exhaust part, if that act causes the motor vehicle to which the muffler or exhaust part is attached to exceed the noise limits established by this subsection.
- (f) A dealer shall not sell or offer for sale for use upon a street or highway in this state a new motor vehicle manufactured after April 1, 1978, which produces a maximum noise exceeding the following limits:
 - [1] A motor vehicle with a gross vehicle weight rating of 8,500 pounds or more: 83 dB(A).
 - [2] A motorcycle or a moped: 83 dB(A).
 - [3] A motor vehicle not covered in Subsection **C(2)(f)[1]** or **[2]**: 80 dB(A).
- (g) A dealer shall not sell a used or secondhand motor vehicle for use upon a street or highway which is not in compliance with this subsection.
- (3) Proof of violation. If it is shown that the noise level of a motor vehicle is in excess of the dB(A) levels established in this section, that evidence shall be prima facie evidence that the motor vehicle was producing excessive noise in violation of this section.
- (4) Penalties.
 - (a) A person who violates Subsection **C(2)(a), (b), (c)** or **(d)** is responsible for a civil infraction.
 - (b) A person who violates Subsection **C(2)(e), (f)** or **(g)** is guilty of a misdemeanor.
- (5) Fine. A person who, at the time of installation, knowingly installs a muffler or exhaust system which exceeds the decibel limits of this section shall be liable

to the person who receives a citation for violation of Subsection **C(2)** for the amount of not less than \$100 plus reasonable attorney fees and court costs.

- (6) Test procedures. Test procedures under this Subsection **C** shall comply with those established pursuant to MCLA § 257.707e.

§ 21-8. Use or operation of radios, phonographs, etc.

[P&L Code § PL202A.3]

No person shall use, operate or permit to be played any radio receiving set, musical instrument, television set, phonograph or other machine or device for the production or reproduction of sound, in such manner as to disturb the quiet, comfort or repose of any person. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be in violation of § **21-7** shall be prima facie evidence of a violation of this section.

§ 21-9. Use of loudspeaker or sound amplifier for commercial purposes.

[P&L Code § PL202A.3]

The installing, using or operating, within the City, of a loudspeaker or sound amplifying equipment, for commercial purposes, in such a manner as to disturb the quiet, comfort or repose of any person is prohibited. The operation of any such equipment or device in such a manner as to be in violation of § **21-7** shall be prima facie evidence of a violation of this section.

§ 21-10. Use of sound trucks.

[Traf. Code § 38]

No sound truck or other vehicle equipped with amplifier or loudspeaker shall be driven upon any street for the purpose of selling, offering for sale or advertising in any fashion.

§ 21-11. Yelling, whistling, etc.

[P&L Code § PL202A.3]

Yelling, shouting, hooting, whistling or singing at any time or place, so as to disturb the quiet, comfort, or repose of any person, is prohibited. The occupant or person in charge of any building emitting such noise and the person owning or operating any vehicle or device emitting such noise shall be deemed responsible therefor and shall be in violation of this section.

§ 21-12. Selling by outcry in residential districts.

[P&L Code § PL202A.3]

The selling of anything by outcry within any area of the City zoned primarily for residential uses is prohibited.

§ 21-13. Use of drum or other device to attract attention to show, sale, etc.

[P&L Code §§ PL202A.3, PL1203.6]

No person shall use any drum, bell, buzzer or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show, auction or other sale, or for any other commercial purpose.

§ 21-14. Handling of boxes, crates, containers, etc.

[P&L Code § PL202A.3]

The loading, unloading, opening or otherwise handling of boxes, crates, containers, garbage containers or other objects, in such a manner as to disturb the quiet, comfort or repose of any person, is prohibited.

§ 21-15. Noisy animals and fowl.

[P&L Code § PL202A.3]

No person shall own, keep, harbor or have possession of any animal or fowl which, by frequent or habitual howling, barking, meowing, squawking or other noise, shall disturb the quiet, comfort or repose of any person.

§ 21-16. Noise from vehicles generally.

[P&L Code § PL202A.3]

The use of any truck, automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise is prohibited.

§ 21-17. Repairing, rebuilding or testing vehicles.

[P&L Code § PL202A.3]

The repairing, rebuilding or testing of any truck, automobile, motorcycle or other motor vehicle within the City, in such a manner as to disturb the quiet, comfort or repose of any person, is prohibited.

§ 21-18. Sounding of vehicle horn or signaling device.

[P&L Code § PL202A.3]

The sounding of any horn or signaling device on any truck, automobile, motorcycle or other motor vehicle on any street or public place of the City, except as a warning signal as provided in the Michigan Vehicle Code, is prohibited.

§ 21-19. Unmuffled exhaust from engine or motor; modifying noise-abatement device on engine or motor.

[P&L Code § PL202A.3]

The discharge, into the open air, of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom, is prohibited. Modifying any noise-abatement device on any motor vehicle or engine in a manner so that the noise emitted by such vehicle or engine is increased above that emitted by such vehicle or engine as originally manufactured shall be a violation of this section.

§ 21-20. Construction noises.

[P&L Code § PL202A.3]

The performing of any construction or repair work on buildings, structures or projects, or the operating of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other construction-type device, in such a manner as to disturb the quiet, comfort or repose of any person, is prohibited, except in cases of unnecessary hardship. In such cases, a permit shall be obtained from the City Manager in accordance with Article II of this chapter.

§ 21-21. Noise near school, church, court, hospital or nursing home.

[P&L Code § PL202A.3]

No person shall create any excessive noise within the vicinity of any school, institution of learning, church or court while the same is in use, or within the vicinity of any hospital or nursing home, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed on streets within the vicinity indicating the presence of a school, hospital, court, church or nursing home.

CITY CODE OF ORDINANCES CHAPTER 1301.

MEDICAL MARIHUANA LICENSING AND OPERATIONS

1301.01 Legislative Intent

1301.02 Definitions

1301.03 Licensure requirements

1301.04 Applications for license

1301.05 Minimum Operational Standards of Medical Marihuana Facilities and Dispensaries

1301.06 Minimum operational standards of medical marihuana home occupations

1301.07 Location of Medical Marihuana Facilities and Dispensaries

1301.08 Locations of Medical Marihuana Home Occupations

1301.09 Denial and Revocation

1301.10 Penalties and discipline

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1301.12 Severability

1301.01 -LEGISLATIVE INTENT

The City intends to license and regulate medical marihuana facilities, dispensaries and home cultivation to the extent they are permitted under the Michigan Marihuana Act. The City does not intend that licensing and regulation under this chapter be construed as a finding that such operations are legal under state or federal law. Although some specific uses of marihuana are allowed by the Michigan Marihuana Act, marihuana continues to be classified as a Schedule 1 controlled substance under federal law, making it unlawful under federal law to manufacture, distribute, dispense or provide. By requiring a license and compliance with requirements set forth in this chapter, the City intends to protect to the extent possible, the public health, safety and welfare of the residents of and visitors to the City, including registered qualifying patients and their caregivers, especially from harm that might result from those who may choose to conduct medical marihuana operations in ways that are inconsistent with the mandates of this chapter.

This chapter permits activities as described in the Michigan Marihuana Act. Nothing in this chapter shall be construed as allowing persons to engage in conduct that endangers others or to allow the use, cultivation, or growth of medical marihuana not in strict accordance with what is authorized by the Act.

1 **1301.02 – DEFINITIONS**

2 For the purposes of this chapter:

3 (a) Any term defined by the Michigan Medical Marihuana Act, MCL 333.26421 et seq., shall have the
4 definition given in the Michigan Medical Marihuana Act.

5 (b) Any term defined by 21 USC 860(e) shall have the definition given by 21 USC 860(e).

6 (c) The following terms shall have the definitions given:

7 “Department” means the State of Michigan Department of Community Health.

8 “Provisioning Center” means a location where one or more primary caregivers store and distribute
9 medical marihuana out of a building or structure.

10 “Provide/Provision” means the physical transfer of any amount of marihuana in any form from a primary
11 caregiver to a qualifying patient.

12 “Provider” means a primary caregiver who engages in any one or more acts of providing.

13 “Facility” means a commercial business having a separate or independent postal address where medical
14 marihuana is cultivated and also may be provided.

15 “Home Occupation” means the residential cultivation of Medical Marihuana by a Qualifying Patient as
16 defined by the Act, in compliance with the general rules of the Department of Licensing and Regulatory
17 Affairs, within a single family dwelling that is the Registered Qualifying Patient’s primary residence and
18 in which the cultivation is in conformity with the restrictions and regulations contained in the Act, this
19 Chapter and any State regulations developed by the Michigan Department of Licensing and Regulatory
20 Affairs (LARA). Medical Marihuana Home Cultivation is prohibited in any multi-family dwelling.

21 “Licensee” means a person holding a city issued license related to medical marihuana operations.

22 “Medical Marihuana” means any marihuana intended for medical use that meets all requirements for
23 medical marihuana under the act and excludes any form of marihuana inconsistent with the definition
24 of usable marihuana under the Act; 1976 PA 368, MCL 333.7106.

25 “Michigan Medical Marihuana Act” or “Act” means the Michigan medical marihuana act, 2008 Initiated
26 Law, MCL 333.26421 to 333.26430.

27 “Medical use of Marihuana “ means the acquisition, possession, cultivation, manufacture, extraction,
28 use, internal possession, delivery, transfer, or transportation of marihuana, or paraphernalia relations
29 to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating
30 medical condition.

31 .

1 "Primary caregiver" or "caregiver" means a person as defined under MCL 333.26423(g) of the Act, who
2 had been issued and possesses a Registry Identification Card under the Act and provides medical
3 marihuana to a qualifying patient other than themselves. The cultivation of marihuana by a caregiver
4 and the provision of caregiver services relating to marihuana use shall be permitted in accordance with
5 the Act.

6 "Principal residence" means the place where the person resides more than half of the calendar year.

7 "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a
8 debilitating medical condition and who has been issued and possesses a Registry Identification Card
9 under the Act.

10 "Restricted/Limited Access Area" means, a building, room or other area under the control of the
11 licensee with access limited to qualifying patients or primary caregivers.

12 "Registry Identification card" means the document defined by the Michigan Medical Marihuana Act.
13

14 **1301.03 -LICENSURE REQUIREMENTS.**

15 (a) The cultivation of marihuana by a caregiver or any other person permitted under the Act, and the
16 provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with
17 the Act. No cultivation, provisioning , or other assistance to a patient shall be lawful at a location unless
18 such location for such cultivation, provisioning, and assistance shall have been licensed under this
19 Chapter.

20 (1) A facility or provisioning center in operation on the effective date of this ordinance may
21 continue operations without a license only if the operator applies for a license within thirty (30)
22 days of the effective date of this ordinance and if no zoning, permit, or license applications or
23 approvals have already been denied. Proof of operation before implementation of this
24 ordinance shall be provided at the time of applying.
25

26 (b) Each caregiver operating at a facility or provisioning center shall obtain a separate license prior to
27 operating.

28 (c) The following locations shall require licensure:

29 (1) A facility used for the cultivation of marihuana by caregivers or patients permitted under the
30 Act;

31 (2) A provisioning center or facility used for distribution;

32 (3) Any facility used to provide any other assistance to patients by caregivers permitted under
33 the Act relating to medical marihuana;

(4) The principal residence where the residence is being utilized as a home occupation..

(d) Operating as a primary caregiver, whereas medical marijuana is provided by the primary caregiver to another, is prohibited in a residence.

(e) Any portion of the structure where energy usage exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subjected to inspection and approval by the fire department to insure compliance with the city's adopted International Fire Code.

(f) All premises required to be licensed shall be open for inspection upon request by the city's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules during normal business hours of 9:00 a.m. until 5:00 p.m. or at such times as anyone is present on the premises.

1301.04 -APPLICATION FOR LICENSE.

(a) An application for an annual license or renewal of a previously issued license under this section shall be submitted to the city clerk. A license shall be issued or renewed upon payment of the required fee, submission of a completed application in compliance with the provisions of this chapter, and compliance with all provisions and requirements of this chapter. There will be no license fee for home occupation operations.

(b) An application renewal shall be submitted annually. Applications to renew a license under this chapter shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(c) An application shall include the names of all caregivers operating in the same facility/provisioning center or on the same premises and a copy of the caregiver's state issued registry identification card.

(d) Pursuant to the act, primary caregivers shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime. If a criminal background check reveals any such felony conviction, no license shall be issued and any existing license shall be revoked.

(e) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the City any outstanding back taxes, fines, fees or liens.

(f) Each facility or provisioning center license application required by this chapter shall include the following:

(1) The marijuana facility or provisioning center history of the applicant; whether such person has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

- (2) The address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of medical marihuana.
- (3) If applicable, the initial application fee or renewal fee as established by council; thereafter they shall be established by annual resolution of the city council.
- (4) A description of the products and services to be provided by the facility/provisioning center, including retail sales of any item.
- (5) A plan for the disposal of any medical marihuana in any form that has not been provided pursuant to the Act of this chapter. This plan shall protect against and portion being possessed or ingested by a person or animal. Disposal by burning or introduction into the sewage system is prohibited.
- (6) Procedures for testing contaminants, including mold and labeling of products that include marihuana in any form.
- (7) Describe the enclosed, locked facility in which any and all cultivation of medical marihuana is proposed to occur, or where medical marihuana is stored, with such description including: location of building, precise measurements in feet of the floor dimensions and heights; the security plan for the facility; and in the case with facilities or provisioning center with more than one primary caregiver, a declaration that each caregiver will only have access to the medical marihuana that is identified to that caregiver and to the individual qualified patients associated with the caregiver in accordance with the Act.
- (8) Specify the number of patients to be assisted by each caregiver, separating the number of patients for whom medical marihuana is proposed to be cultivated from the number of patients to be otherwise assisted on the premises.
- (9) If the applicant is an individual, the applicant's name, date of birth, physical address, copy of photo identification, email address, and one or more phone numbers, including emergency contact information;
- (10) If the applicant is not an individual, the names, dates of birth, physical addresses, copy of Government issued photo identification, email addresses, and one or more phone numbers of each stakeholder of the applicant, including designation of the highest ranking stakeholder as an emergency contact person and contact information for the emergency contact person. In addition, the articles of incorporation, assumed name registration documents, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement of the applicant;
- (11) A statement with respect to each person named on the application that he or she has not been convicted of or pled guilty to a felony involving controlled substances or assaultive crimes preceding the date of application and a signed release authorizing the Lansing Police Department to perform a criminal background check to ascertain whether the applicant named on the application meets these requirements.

(12) One of the following: (a) proof of ownership of the entire premises where the Medical Marihuana operations will be conducted; or (b) written consent from the property owner for use of the premises in a manner requiring licensure under this chapter along with a copy of the lease for the premises;

(13) Proof of an insurance policy covering the facility or provisioning center and naming the city as an additional insured party, available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of (a) at least one million dollars for property damage; (b) at least one million dollars for injury to one person; and (c) at least two million dollars for injury to two or more persons resulting from the same occurrence. The insurance policy underwriter must have a minimum A.M. Best company insurance ranking of B+, consistent with state law;

(14) A description of the security plan for the facility or provisioning center, including but not limited to, any lighting, alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the premises. The City may establish minimum security measures;

(15) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the city;

(16) An affidavit that only primary caregivers will be involved in the transfer of marihuana to qualifying patients and only in the manner allowed by the Act;

(17) Any proposed text or graphical materials to be shown on the exterior of the proposed facility of provisioning center;

(18) Patient Education plan; (requirements to be established by council; carryover from prior Lansing ordinance.)

(19) Recordkeeping and inventory procedures that describe how the acquisition and provision of medical marihuana will be tracked. This shall include on-site cultivation and processing;

(20) A location area map of the facility or provisioning center that identifies the relative locations and the distances to the facility of the real property comprising a public or private elementary, vocational or secondary school; a child care organization required by the child care organizations act, PA 1 16 of 1973, to be licensed or registered by the Michigan Department of Human Services.

(21) A facility or provisioning center sanitation Plan; (requirements to be established by council)

(g) Upon receipt of a completed facility or provisioning center application meeting the requirements of this Chapter the city clerk will confirm that the number of existing licenses does not exceed the maximum number established by resolution pursuant to subsection ____ .

(h) No application shall be approved unless:

- (1) The Fire Department has inspected the proposed location for compliance with all laws for which it is charged with enforcement;
- (2) The Building Safety Office has inspected the proposed location for compliance with all laws for which it is charged with enforcement ;
- (3) The applicant and each stakeholder of the applicant have passed a background check conducted by the Police Department;
- (4) The Zoning Administrator has confirmed that the proposed location complies with the Zoning Code; and
- (5) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant are not in default to the City.

(i) If final approval is obtained, all use of the property shall be in accordance with the license application, including all information and specifications submitted by the applicant in the application.

(j) Licensees shall report any other change in the information required by this section to the City Clerk within ten days of the change.

(k) Any applicable application or license fees will be set by Council.

1301.05—MINIMUM OPERATIONAL STANDARDS FOR FACILITIES AND PROVISIONING CENTERS

(a) Nothing in this chapter, or any companion regulatory provisions adopted in any other provision of the Code, is intended to grant, nor shall it be construed as granting immunity from criminal prosecution for:

(1) Cultivation, sale, consumption, use, provision, manufacture or possession of marihuana in any form not in compliance with the Act or,

(2) Any criminal prosecution under federal laws including seizure of property under the Federal Controlled Substances Act. 21 U.S.C. Sec. 801 *et seq.*

(b) Whether a facility or provisioning center, there shall not be more than 12 Medical Marihuana plants being cultivated by a patient for themselves or in the case of a caregiver, 12 per patient, in strict accordance with the Act.

(c) Consumption of Medical Marihuana shall be prohibited on the premises of a facility or provisioning center, and a sign shall be posted on the premises indicating that consumption is prohibited on the premises.

(d) The facility or provisioning center shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras. The video recordings shall be maintained in a secure, off-site location for a period of not less than 14 days.

- (e) Public or common areas of a facility or provisioning center must be separated from restricted or non-public areas by a permanent barrier. No Medical Marihuana is permitted to be stored, displayed, or transferred in an area accessible to the general public.
- (f) All Medical Marihuana storage areas within a facility or provisioning center must be separated from any customer/patient areas by a permanent barrier. No Medical Marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients.
- (g) Any usable Medical Marihuana remaining on the premises of a facility or provisioning center while it is not in operation shall be secured in a safe permanently affixed to the premises.
- (h) No facility or provisioning center shall have a drive-through window on the premises.
- (i) No facility or provisioning center shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the facility or provisioning center is operated.
- (j) The license required by this chapter shall be prominently displayed on the premises of the facility or provisioning center.
- (k) Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with state law and this chapter.
- (l) All Medical Marihuana delivered to a patient shall be packaged and labeled as provided in this chapter. The label shall include:
- (1) A unique alphanumeric identifier for the person to whom it is being delivered;
 - (2) A unique alphanumeric identifier for the registered primary caregiver who is delivering the medical marihuana;;
 - (3) That the package contains Medical Marihuana;
 - (4) The date of delivery, weight, type of Medical Marihuana, dollar amount or other consideration being exchanged in the transaction;
 - (5) A certification that all Medical Marihuana in any form contained in the package was cultivated, manufactured and packaged in conformance with state law;
 - (6) The warning that:
This product is manufactured without any regulatory oversight for health, safety or efficacy. There may be health risks associated with the ingestion or use of this product. Do not drive or operate heavy machinery while using this product. Keep this product out of reach of children. This product may not be used in any way that does not comply with the Michigan Medical

1 **Marihuana Act or by any person who does not possess a valid medical marihuana patient**
2 **registration card.**

3 (7)The name, address, email address, and telephone number of the facility or provisioning
4 center that a patient can contact with any questions regarding the product.

5 (m) All registered patients must present both their Michigan registry identification card and Michigan
6 State ID prior to entering restricted/limited areas or non-public areas of the facility or provisioning
7 center.

8 (n) Each facility or provisioning center shall be open for inspection during the stated hours of operation
9 and as such other times as anyone is present on the premises.

10 (o) Alcoholic beverages shall not be sold, consumed or distributed on the premises of facility or
11 provisioning center.

12 (p) No facility or provisioning center shall allow loitering inside or outside its premises.

13 (q) Medical Marihuana facilities and provisioning center shall be closed for business, and no sale or
14 other distribution of marihuana in any form shall occur upon the premises or be delivered from the
15 premises, between the hours of ____ and ____.

16 (r) The use of the symbol or image of a marihuana leaf in any exterior signage at any caregiver operated
17 facility or provisioning center is strictly prohibited. Furthermore, it shall be prohibited to display any
18 signs that are inconsistent with local laws or regulations or State law.

19 **1301.06 –MIMINUM OPERATIONS STANDARDS FOR MEDICAL MARIHUANA HOME OCCUPATION.**

20 (a) All use of marihuana on the premises shall comply with the Act at all times. In addition, the following
21 minimum standards for medical marihuana home occupations shall apply:

22 (1) The maximum area for home occupations shall be calculated as 25 percent of the useable
23 residential floor area of a dwelling unit or 300 feet whichever is less;

24 (2) A qualified patient must be an occupant of the home;

25 (3) The use of the dwelling unit for medical marihuana cultivation shall be clearly incidental and
26 subordinate to its use for residential purposes. The residence shall maintain kitchen, bathrooms,
27 living rooms, dining rooms, hallways, and primary bedrooms for their intended use and not for
28 cultivation of medical marihuana;

29 (4) All medical marihuana that is not being consumed at the time shall be contained within an
30 enclosed, locked facility inside a primary or accessory building;

31 (5) All necessary building, electrical, plumbing and mechanical permits shall be obtained for
32 portion of the building in which electrical wiring, lighting and/or watering devices that support
33 the cultivation, growing or harvesting of marihuana are located. That portion of the building

where energy usage and heat exceeds typical residential use, such as grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Lansing fire department to insure compliance with the Michigan fire protection code;

(6) The premises shall be open for inspection upon probable cause and request by either building code officials, the fire department, or law enforcement officials to determine compliance with all applicable laws and rules;

(7) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11:00 p.m. and 7:00 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties or vehicles on adjacent right-of-ways;

(8) Exterior signage identifying medical marihuana home cultivation is prohibited;

(9) The cultivation, process, or use of medical marihuana which creates noise, dust, vibration, glare, fumes, noxious odors or electrical interference detectable to the normal senses from the exterior of the curtilage of the premises shall be prohibited; and

(10) Copies of the registry identification card for the qualifying patient must be maintained on premises during all times of operation.

1301.07 –LOCATION OF MEDICAL MARIHUANA FACILITIES AND PROVISIONING CENTERS.

(a) No Medical Marihuana facility or provisioning center shall be located within:

(1) 1,000 radial feet of real property comprising a public or private elementary, vocational, or secondary school; A child care organization required by the child care organization act, PA 116 of 1973, to be licensed or registered by the Michigan department of human services.

(b) Medical Marihuana facilities and provisioning center shall be limited to appropriate retail zoning districts as follows:

(1) The “F” and “F-1” Commercial, “E-2” Local Shopping, “G-2” Wholesale, “H” Light Industrial and “I” Heavy Industrial Districts, as long as there is no residential use on the parcel containing the facility or provisioning center.

1301.08 –LOCATIONS OF MEDICAL MARIHUANA HOME OCCUPATIONS.

(a) Medical Marihuana Home Occupations shall be limited to the following residential zoning districts:

(1) Zones “A”, “B”, “C”, “DM-1”, “DM-2”, “DM-3”, and “DM-4”

(b) Medical Marihuana Home Occupation is prohibited in any multi-family dwelling.

1
2 **1301.09 –DENIAL AND REVOCATION**

3 (a) A license is valid only for the location identified on the license and cannot be transferred to another
4 location within the city without a new application. If a new application for a proposed license location
5 meets the standards identified in this chapter, licenses may transfer a license issued under this chapter
6 to a different location within the City as long as the transfer would conform with the other provisions of
7 this ordinance.

8 (b) A license does not prohibit prosecution by the federal government of its laws or prosecution by state
9 authorities for violations of the Act or other violations not protected by the Act.

10 (c) If an applicant or licensee fails to comply with this chapter or rules, if a licensee no longer meets the
11 eligibility requirements for a license under this ordinance, or if an applicant or licensee fails to provide
12 information requested by the City Clerk to assist in any investigation, inquiry, or administrative hearing,
13 the Clerk may deny, suspend, or revoke a license. The Clerk may suspend, revoke, or restrict a license
14 and require the removal of a licensee or an employee of a licensee for a violation of this chapter. The
15 Clerk may impose civil fines, in the amount to be set by City Council Resolution, for each violation of this
16 chapter, rules, or order of the City Clerk. In addition, a license may be suspended or revoked for any of
17 the following reasons:

18 (1) Any conviction for or guilty plea to a felony involving controlled substances or assaultive crimes
19 by a licensee or any stakeholder of the occurring: (a) prior to being issued a license; or (b) while
20 licensed under this chapter;

21 (2) Commission of fraud or misrepresentation or the making of a false statement by the licensee or
22 any stakeholder of the licensee while engaging in any activity for which this chapter requires a
23 license;

24 (3) The licensee's operation is determined by the City to have become a public nuisance;

25 (d) A license issued under this chapter may be revoked after an administrative hearing at which it is
26 determined that any grounds for revocation under Subsection (c) exist. Notice of the time and place of
27 the Hearing and the grounds for revocation must be given to the Licensee at least five days prior to the
28 date of the hearing, by first class mail to the address given on the license application or any address
29 provided pursuant to Section 1300.03(g).

30 (e) The City Clerk may designate a Special Hearing Officer to conduct investigative and contested case
31 hearings; issue subpoenas for the attendance of witnesses; issue subpoenas duces tecum for the
32 production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent
33 documents; and administer oaths and affirmations to witnesses as appropriate to the exercise and
34 discharge the powers and duties of the clerk under this chapter.

(f) Suspension or revocation of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or revocation or any other code violations not protected by the Act.

(g) Each day that a licensee shall conduct an operation, whether it be facility, provisioning center or home cultivation related, without a license or allow, operate, or assist in said unlicensed operation shall constitute a separate offense.

(h) If a licensee has ceased business operations for 60 consecutive days, the licensee shall return the license to the City Clerk. If the licensee demonstrates good cause and all required fees are paid, the Clerk may place the license in escrow for up to 1 year. To remove a license from escrow, the licensee must submit the Clerk with a written request and any other information required by rule.

1301.10 PENALTIES AND DISCIPLINE

(a) The city of Lansing may require an Applicant or Licensee to produce documents, records, or any other material pertinent to the investigation of an application or alleged violation of this chapter. Failure to provide the required material may be grounds for application denial, license revocation, or discipline.

(b) Any person in violation of any provision of this chapter shall be subject to a civil fine. Increased civil fines may be imposed for repeated violations of any requirements or provisions of this chapter. As used in this section "repeat offense" means a second or any subsequent infraction of the same requirement or provision committed by a person within any 12-month period and for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided in this chapter or any other ordinance for a Municipal Infraction, the increased schedule is as follows:

1. _____, plus costs the first infraction;

2. A fine of any offense which is a first repeat offense shall be not less than _____ dollars, plus costs.

3. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than _____ dollars plus costs.

(c) All fines imposed under this chapter shall be paid within 45 days after the effective date of the order imposing the fine or as otherwise specified in the order. If the licensee fails to pay any and all fines within 45 days, the clerk may initiate revocation/suspension proceedings.

1301.11 -NO VESTED RIGHTS

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this chapter or any amendment of this chapter.

1301.13 -SEVERABILITY

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1 If any clause, sentence, section, paragraph, or part of this chapter, or the application thereof to any
2 person, legal entity, or circumstance, shall be for any reason adjudged by a court of competent
3 jurisdiction to be invalid, the application of such provision to other persons, legal entities or
4 circumstances by such shall be confined in its operation to the part of the this chapter directly involved
5 in the case or controversy in which such judgment shall have been rendered and to the person, legal
6 entity or circumstances then and there involved. It is hereby declared to the legislative intent of this
7 body that the chapter would have been adopted had such provision had not been included in this
8 chapter.

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DRAFT



Date: May 19, 2016

To: Honorable Lansing City Council

From: Jamaine Dickens, DMC Strategies

RE: Proposed Medical Marihuana Ordinance/Drive-Thru Service Windows

The Michigan Medical Marihuana Act (MMMA), passed as a ballot initiative in 2008, indicates acceptance by the overwhelming majority of Michigan voters. The MMMA passed by a 2-1 margin in every county in the state Michigan. In Lansing, nearly three out of every four residents voted in favor of the MMMA, however, for some elected officials the idea of caregivers dispensing medical marihuana in a commercial facility is still a very polarizing issue.

The City of Lansing passed and codified an ordinance regulating this commercial use in 2011, which authorized drive-thru windows. On May 12, 2016, the City of Lansing passed a moratorium on licensing such facilities, even though the City has never implemented its existing framework. And now, the City is drafting a new ordinance to regulate medical marihuana caregiver centers.

In the current draft, Section 1301.05 (h), drive-thru windows are prohibited; however, it is our belief that drive-thru windows not only satisfy the needs of medical marijuana patients who suffer from debilitating illnesses and chronic pain, but also satisfies the concerns of those who oppose medical marihuana caregiver facilities as a whole.

As such, we ask that you reconsider your current position on drive-thru service windows, allowing them in industrially zoned areas only, for the following reasons:

1. **Drive-thru service makes patient care the top priority.** What is often forgotten in the debate concerning drive-thru windows at caregiver facilities is that the receiving patients have very serious medical conditions. Many patients have mobility issues; therefore, allowing drive-thru service windows offers immediate ADA compliance, which is federal law. At the same time, drive-thru service provides patients who suffer from debilitating illness the necessity and convenience of barrier-free access.

According to the MMMA, the following conditions have been identified for use of medical marihuana:

"Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis."

2. **The MMMA recognizes medical marihuana as medicine.** Therefore, caregiver centers should be treated as a medical use with the same zoning and policy considerations as pharmacies, many of which dispense opiate or opioid medications such as Morphine, Codeine, Oxycodone using drive-thru windows. Opiates (naturally occurring) or opioids (synthetic) are the active ingredients in heroin, which is an ILLEGAL substance. Medical marihuana is a LEGAL medicine and should be treated as such, and caregiver facilities should be allowed to dispense medicine in the same manner as any pharmacy with a drive-thru.
3. **A drive-thru satisfies nuisance concerns.** Opponents of these facilities characterize them as a nuisance, with which we vehemently disagree. However, under general zoning principles, factors that create a nuisance can include loitering, excessive noise, parking issues, traffic and odors, which could never occur at a facility if patients don't have to exit their vehicle to obtain their medicine. In simple terms, those who oppose these facilities because of the potential nuisance should be in favor of drive-thru windows, if for no other reason than to eliminate the so-called nuisance. With a drive-thru window, the patient would quickly and efficiently purchase the needed medicine from the drive-thru and then leave the site.

4. **Drive-thru service follows the same laws walk-in service.** Instead of prohibiting drive-thru windows, the City of Lansing should impose operating conditions for drive-thru windows that explicitly state: (1) Before any transaction at a drive-thru window, a driver's license or state identification must be presented, along with a state-issued medical marihuana card; (2) All medicine dispensed from a drive-thru window is done so in a locked container for transport; (3) A "storing" lane or area shall be provided to allow patients and/or passengers to place the locked container in the trunk of the vehicle before exiting the property, unless it is an SUV, station wagon or pickup truck; (4) A sign directing patents to the "storing" area shall be posted; (5) Personnel may be on hand to assist immobile patients with placing the locked containers in their trunks as needed.

As your Honorable Body moves forward in deliberation over the new medical marihuana ordinance, we implore you not to forget about the sole purpose of the MMMA, which is to provide safe access to patients who critically need their medicine. Many of those patients need the convenience of drive-thru window service. Lastly, these patients are your residents, who are law-abiding, card-carrying, taxpaying citizens who have already suffered enough.

As such, we ask the drive-thru window services be allowed, in industrial and light industrial zoned areas, giving patients the convenient access they need in areas furthest removed from the general public.

I look forward to discussing these issues and others. If you have any questions, please do not hesitate to call me at 313-673-2667, or email me at jdickens@dmcstrategies.com.

cc: Honorable Virg Bernero
Lansing City Clerk
Mark Dotson, Deputy Corporation Counsel

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN MICHAEL BYLSMA,

Defendant-Appellant.

FOR PUBLICATION

May 17, 2016

9:00 a.m.

No. 317904

Kent Circuit Court

LC No. 10-011177-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JAMES OVERHOLT, JR.,

Defendant-Appellant.

No. 321556

Kent Circuit Court

LC No. 13-005106-FH

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

RIORDAN, P.J.

These cases, which involve the application of the Michigan Medical Marihuana¹ Act (“MMMA”), MCL 333.26421 *et seq.*, to a cooperative medical marijuana grow operation and a medical marijuana dispensary, return to this Court on remand from the Michigan Supreme Court for consideration as on leave granted.² They have been consolidated on appeal, as each case

¹ Although the MMMA refers to “marihuana,” this Court uses the more common spelling, *i.e.*, “marijuana,” in its opinions. *People v Carruthers*, 301 Mich App 590, 594 n 1; 837 NW2d 16 (2013). Except when directly quoting the statute, we will use the more common spelling in this opinion.

² *People v Bylsma*, 498 Mich 913; 871 NW2d 157 (2015); *People v Overholt*, 498 Mich 914; 871 NW2d 158 (2015).

presents the same issue: whether a defendant, who possessed, cultivated, manufactured, delivered, sold, or transferred marijuana to a patient or caregiver to whom the defendant was not connected through the registration process of the MMMA, is entitled to raise a defense under § 8 of the MMMA, MCL 333.26428. See *People v Bylsma*, 498 Mich 913; 871 NW2d 157 (2015); *People v Overholt*, 498 Mich 914; 871 NW2d 158 (2015). For the reasons set forth below, we conclude that a § 8 affirmative defense may be available to a defendant who sells, transfers, possesses, cultivates, manufactures, or delivers marijuana to and for patients and caregivers to whom he is not connected through the registration process of the MMMA. However, as a necessary prerequisite, such a defendant must fall within the definition of “patient” or “primary caregiver,” as those terms are defined, used, and limited under the act. See MCL 333.26423, MCL 333.26426, MCL 333.26427(a), MCL 333.26428.

In Docket No. 317904, we affirm the trial court order denying defendant Ryan Michael Bylsma’s motion to dismiss or, in the alternative, permit the assertion of an affirmative defense under § 8 of the MMMA at trial, and remand for further proceedings consistent with this opinion. In Docket No. 321556, we similarly affirm the trial court order denying defendant David James Overholt Jr.’s motion to dismiss and its later ruling that an affirmative defense under § 8 of the MMMA was inapplicable in that case.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. DOCKET NO. 317904

The charges in Docket No. 317904 arise from defendant Bylsma’s operation of a “cooperative medical marijuana grow operation” in Grand Rapids, Michigan. The underlying facts of this action were set forth in *People v Bylsma*, 493 Mich 17, 23-24; 825 NW2d 543 (2012):

Pursuant to § 6 of the MMMA, a qualifying patient and his primary caregiver, if any, can apply to the MDCH for a registry identification card. Defendant Ryan Bylsma did so and, at all relevant times for the purposes of this appeal, was registered with the MDCH as the primary caregiver for two registered qualifying medical marijuana patients. He leased commercial warehouse space in Grand Rapids and equipped that space both to grow marijuana for his two patients and to allow him to assist other qualifying patients and primary caregivers in growing marijuana. A single lock secured the warehouse space, which was divided into three separate booths. The booths were latched but not locked, and defendant moved plants between the booths depending on the growing conditions that each plant required. Defendant spent 5 to 7 days each week at the warehouse space, where he oversaw and cared for the plants’ growth. Sometimes, defendant’s brother would help defendant care for and cultivate the plants. Defendant had access to the warehouse space at all times, although defense counsel acknowledged that two others also had access to the space.

In September 2011, a Grand Rapids city inspector forced entry into defendant’s warehouse space after he noticed illegal electrical lines running along water lines. The inspector notified Grand Rapids police of the marijuana that was

growing there. The police executed a search warrant and seized approximately 86 to 88 plants. Defendant claims ownership of 24 of the seized plants and asserts that the remaining plants belong to the other qualifying patients and registered caregivers whom he was assisting.

Defendant was charged with manufacturing marijuana in violation of the Public Health Code, MCL 333.7401(1) and (2)(d), subject to an enhanced sentence under MCL 333.7413 for a subsequent controlled substances offense. [Footnotes omitted.]

In the trial court, defendant filed a motion to dismiss under § 4 of the MMMA, MCL 333.26424, reserving his right to later raise an affirmative defense under § 8. The trial court denied defendant's motion. *Id.* at 24. Most relevant to this appeal, the court concluded that defendant failed to establish that he was entitled to immunity under § 4, and because his entitlement to an affirmative defense under § 8 was dependent on whether he fulfilled the requirements of § 4, he also was not entitled to raise an affirmative defense under § 8. *Id.*

Subsequently, this Court granted defendant's application for leave to appeal³ and affirmed the trial court's decision. This Court agreed that defendant could not avail himself of the § 4 immunity provision and, as a result, was not entitled to assert an affirmative defense under § 8, given that § 8 required compliance with the provisions of § 4. *Bylsma*, 493 Mich at 25.

Defendant appealed this Court's decision to the Michigan Supreme Court, which affirmed in part and reversed in part. *Id.* at 21-22. The Court agreed that defendant was not entitled to immunity under § 4. *Id.* at 21, 33-35. However, it reversed this Court's decision that defendant was necessarily precluded from raising an affirmative defense under § 8 because he failed to satisfy the elements of § 4. Rather, it concluded that § 4 and § 8 are mutually exclusive, and a defendant is not required to establish the elements of § 4 in order to avail himself of the § 8 affirmative defense. *Id.* at 22, 35-36. The Court then declined to address the merits of the § 8 affirmative defense, concluding that it would be "premature" to decide the issue because defendant neither raised that defense nor received an opportunity to present evidence on that defense in the trial court. *Id.* at 36-37. Accordingly, the Court remanded the case back to the trial court for further proceedings. *Id.* at 37.

On remand, defendant filed a second motion to dismiss the charges against him—or, in the alternative, allow him to raise an affirmative defense at trial—under § 8 of the MMMA. In pertinent part, defendant argued that he was entitled to the defense under § 8 because, under the broad terms of that section, he was a "primary caregiver" for 14 different "patients": himself, Brad Verduin, Jeremy Sturdavant, David Taylor, Alohilani May, Larry Huck, Daniel Bylsma, Dennis Rooy, Glen Woudenberg, James Wagner, Eric Bylsma, John Hooper, Daniel Keltin, and Matthew Roest. Defendant acknowledged that most of his "patients" had primary caregivers

³ *People v Bylsma*, unpublished order of the Court of Appeals, entered April 11, 2011 (Docket No. 302762).

other than himself, but he asserted that this fact was not relevant for purposes of § 8, contending that even though § 4 only allowed a qualifying patient to have one primary caregiver and only allowed a primary caregiver to have five qualifying patients,⁴ there were no such limitations in § 8. In other words, defendant argued that even though he was not the “Section 4 caregiver” for most of these individuals, he was their “Section 8 caregiver,” as each of them (1) had a documented need for medical marijuana, (2) had been issued a medical marijuana identification card, and (3) was receiving assistance from defendant to meet his or her medical marijuana needs. Additionally, defendant argued that it was “reasonably necessary” for him to possess all of the marijuana plants found in his warehouse to ensure the uninterrupted supply of marijuana to himself and each of his other patients. In response to defendant’s motion, the trial court held a two-day evidentiary hearing. During his testimony, defendant acknowledged that on the day of the raid, he was registered as a “Section 4” primary caregiver for only two patients, Huck and May. However, because of his training and experience with cultivating marijuana, he believed that he could “help anybody that needed help, as long as they had doctor’s recommendations” for the use of medical marijuana, including patients who had registered primary caregivers other than defendant and primary caregivers with patients other than defendant. Many of the individuals associated with defendant’s cooperative grow operation also testified regarding their certification as qualified medical marijuana patients or designation as primary caregivers, as well as their relationship with defendant in connection with the cultivation of marijuana. Three licensed Michigan physicians also testified regarding medical certifications that they performed for patients involved in defendant’s cooperative grow operation.

The trial court denied defendant’s motion to dismiss and held that defendant was precluded from raising an affirmative defense under § 8 at trial. In pertinent part, the trial court concluded:

8. Under the MMMA, a “primary caregiver” is “a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.” MCL 333.26423(i). Defendant now argues that at the time of the charged offense, he was a primary caregiver for twelve patients. Defendant contends that because the Supreme Court, in [*People v Kolanek*, 491 Mich 382; 817 NW2d 528 (2012),] and this case, ruled that § 4 and § 8 “operate independently”, there is no limitation on the number of primary caregivers a single patient may have and, accordingly, the fact that some patients “had designated Section 4 registered caregivers did not prevent them from also designating [defendant] as their Section 8 caregiver.” . . . The court is not persuaded by this argument. The record from the January 2011 hearing makes clear that defendant was the primary caregiver for only two patients. Defendant admitted at that time that most of the plants in his warehouse space were for patients other than those with whom he was connected;

⁴ Defendant erroneously cited § 4 for this proposition. As discussed further below, § 6, not § 4, provides that a primary caregiver may assist no more than five qualifying patients. MCL 333.26426(d).

9. Defendant's position requires interpretation of the MMMA, which the people enacted by initiative petition in November 2008.

* * *

When giving the words of the MMMA their ordinary and plain meaning as they would have been understood by the electorate, a primary caregiver refers to the patient's first or main caregiver. This Court must presume that every word, phrase and clause in the act has meaning and avoid any interpretation that renders any part of the statute surplusage. To accept defendant's argument that a qualifying patient could have more than one primary caregiver impermissibly renders the word "primary" nugatory and the Act internally inconsistent

Additionally, concerning defendant's ability to raise a § 8 defense solely with regard to his conduct involving himself, Huck, and May, the trial court concluded that defendant had not presented sufficient evidence to support each element required for the defense under § 8(a).⁵

Subsequently, the trial court denied defendant's motion for reconsideration. Most notably, it reiterated that the record evidence demonstrated that defendant was the primary caregiver for only two patients and rejected defendant's claim that the MMMA allows a qualifying patient to have more than one primary caregiver. Rather, it emphasized that defendant was assisting other primary caregivers with the cultivation of marijuana for patients specifically linked in the registry to those other caregivers, concluding that the MMMA does not permit caregiver-to-caregiver assistance. The trial court also restated its earlier conclusions regarding defendant's failure to establish a question of fact as to each of the elements of a § 8 defense as it pertained to his marijuana-related conduct involving himself or his two qualifying patients.

Defendant filed a second application for leave to appeal in this Court, which was denied.⁶ He then filed an application for leave to appeal in the Michigan Supreme Court, which the Court held in abeyance pending its decisions in *People v Hartwick* (Supreme Court Docket No. 148444) and *People v Tuttle* (Supreme Court Docket No. 148971). After the Court issued a consolidated opinion in *People v Hartwick*, 498 Mich 192; 870 NW2d 37 (2015), it remanded this case back to this Court for consideration as on leave granted. *People v Bylsma*, 846 NW2d 921 (2014).

B. DOCKET NO. 321556

The charges in Docket No. 321556 arise from defendant Overholt's ownership of a medical marijuana dispensary, the Mid-Michigan Compassion Club ("the Club"), in Grand

⁵ After defendant's second motion to dismiss was denied, the prosecution amended the felony information to add one count of maintaining a drug house, MCL 333.7405(d), and one count of possession of marijuana, MCL 333.7403(2)(d).

⁶ *People v Bylsma*, unpublished order of the Court of Appeals, entered November 12, 2013 (Docket No. 317904).

Rapids, Michigan. Defendant Overholt is a registered medical marijuana caregiver for at least one patient.

In March 2013, Grand Rapids police officers executed a search warrant at the Club, discovering various containers, jars, and bags filled with marijuana; several jars of “hash oil”; plastic baggies containing “marijuana candies”; digital scales; and money. Defendant was charged with delivery or manufacture of less than 50 grams of a schedule 1 or 2 controlled substance (Delta 1-Tetrahydrocannabinol), MCL 333.7401(2)(a)(iv); delivery or manufacture of less than 5 kilograms or 20 plants of marijuana, MCL 333.7401(2)(d)(iii); and maintaining a drug house, MCL 333.7405(d).

The preliminary examination testimony revealed that the Club operated on a membership basis, meaning that any person with a medical marijuana patient or caregiver card could become a member and purchase marijuana through the Club as long as he or she presented the proper documentation and paid the \$20 annual fee. The marijuana that defendant sold to Club members was grown by himself or his “network of growers.”⁷ Originally, defendant sold marijuana to both patients and caregivers through the business. However, following the Michigan Supreme Court’s decision in *State v McQueen*, 493 Mich 135; 828 NW2d 644 (2013), defendant, in an effort to remain in compliance with the MMMA, began to allow only caregivers to become members. However, based on the investigating detective’s understanding of defendant’s operations, defendant continued to sell marijuana directly to some patients even after the *McQueen* decision.

Before trial, defendant moved to dismiss his charges under § 8 of the MMMA, MCL 333.26428, arguing that (1) he was in compliance with the MMMA because any “person”—not just a “patient” or “caregiver”—could claim a defense under § 8(b); (2) the statute does not require all marijuana used for medical purposes to be grown by a patient or caregiver and, as a result, contemplates caregiver-to-caregiver transactions; (3) he only sold marijuana to members of the Club that provided proof that they were “authorized to be in possession of medical marijuana,” *i.e.*, caregivers or patients who did not have caregivers; (4) he only possessed an amount of marijuana that was reasonably necessary to ensure the uninterrupted availability of marijuana for his Club members; and (5) he only provided marijuana to individuals who were using it for medical purposes. In response, the prosecution argued, *inter alia*, that defendant could not assert an affirmative defense under § 8 because it only applied to “a patient and a patient’s primary caregiver,” and the evidence showed that he supplied marijuana to people who were not his patients.

Following a hearing, during which no evidence was presented, the trial court adopted the prosecution’s reasoning and denied defendant’s motion to dismiss. It emphasized its duty to enforce the law as written and concluded that defendant’s position was an improper extension of

⁷ Later, defendant Overholt’s charges were amended. The charge of delivery or manufacture of less than fifty grams of a schedule 1 or 2 controlled substance (Delta 1-Tetrahydrocannabinol), MCL 333.7401(2)(a)(iv), was dismissed. One count of delivery or manufacture of a schedule 1, 2, or 3 controlled substance other than marijuana, MCL 333.7401(2)(b)(ii), was added.

the MMMA. However, at that time, the trial court did not decide whether defendant would be permitted to raise an affirmative defense under § 8 at trial.⁸

On the date set for trial, the court addressed whether defendant was entitled to raise a § 8 defense at trial even though he was not entitled to dismissal under that section. It concluded that defendant was not entitled to do so, reiterating its obligation to apply the MMMA as written and noting the absence of any provision in the MMMA allowing caregiver-to-caregiver sales of marijuana. Likewise, it stated that it found no provision of § 8 applicable in this case. Thus, the trial court concluded that a § 8 defense was “irrelevant” and that defendant could not present it, adding that it would not reconsider this issue unless the proofs demonstrated that defendant acted in compliance with the MMMA.

Immediately thereafter, defendant accepted a settlement offer presented by the prosecution, under which he pleaded no contest to one count of delivery or manufacture of marijuana in exchange for the dismissal of the remaining counts and a recommendation of no jail time if he closed his business. The plea was conditional upon appellate review of the MMMA. The trial court accepted the plea and sentenced defendant to two years’ probation.

Defendant filed a delayed application for leave to appeal in this Court, which was denied.⁹ He then applied for leave to appeal in the Supreme Court. As in Docket No. 317904, the Supreme Court held defendant’s application in abeyance pending its decisions in *People v Hartwick* (Supreme Court Docket No. 148444) and *People v Tuttle* (Supreme Court Docket No. 148971). *People v Overholt*, 858 NW2d 54 (2015). Following the issuance of its consolidated opinion in *Hartwick*, 498 Mich 192, the Court reconsidered defendant’s application for leave to appeal and, in lieu of granting leave, remanded the case back to this Court for consideration as on leave granted.

II. STANDARD OF REVIEW

“We review for an abuse of discretion a circuit court’s ruling on a motion to dismiss[,] but review de novo the circuit court’s rulings on underlying questions regarding the interpretation of the MMMA[.]” *Bylsma*, 493 Mich at 26 (footnotes omitted). “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013).

III. RAISING A DEFENSE UNDER § 8 OF THE MMMA

⁸ See *People v Kolanek*, 491 Mich 382, 412; 817 NW2d 528 (2012) (stating that a trial court has three options when deciding a motion to dismiss under § 8: (1) grant the motion to dismiss, (2) deny the motion to dismiss but allow the defendant to raise the defense at trial, or (3) deny the motion to dismiss and preclude the defendant from raising the defense at trial).

⁹ *People v Overholt*, unpublished order of the Court of Appeals, entered June 4, 2014 (Docket No. 321556).

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a). [MCL 333.26428(a), (b) (footnote omitted).¹¹]

Accordingly, under MCL 333.26428(a), “a *patient* and a *patient’s primary caregiver*, if any,” may assert the medical use of marijuana as an affirmative defense in a marijuana-related prosecution. (Emphasis added.) We agree with defendants that an individual who qualifies as a “patient” or a “primary caregiver” may assert a § 8 defense regardless of his registration status and the registration status of the patient or primary caregiver, if any, with which he is affiliated. See *Hartwick*, 498 Mich at 213, 228; *Kolanek*, 491 Mich at 402. As the Michigan Supreme Court noted in *Hartwick*, 498 Mich at 236, “Those patients and primary caregivers who are not registered may still be entitled to § 8 protections if they can show that their use of marijuana was for a medical purpose—to treat or alleviate a serious or debilitating medical condition or its symptoms.” Accordingly, we hold that a defendant who possessed, cultivated, manufactured, sold, transferred, or delivered marijuana to someone with whom he was not formally connected through the MMMA registration process may be entitled to raise an affirmative defense under § 8. However, we also hold that in order for such a defendant to be entitled to raise a defense under § 8, he must qualify as a “patient” or “primary caregiver” *as those terms are defined and limited under the MMMA*. See *Hartwick*, 498 Mich at 209 (“Under the MMMA . . . ‘[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of th[e] act.’ The MMMA grants to persons in compliance with its provisions either immunity from, or an affirmative defense to, those marijuana-related violations of state law.”) (footnote omitted; alterations in original), quoting MCL 333.26427(a).

Given the context of these consolidated appeals, it is necessary for us to clarify who constitutes a “patient” and a “primary caregiver” under the MMMA. “[I]n interpreting a statute, this Court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.” *People v Beardsley*, 263 Mich App 408, 412; 688 NW2d 304 (2004). At time of the offenses at issue, “patient” was not defined in the MMMA; only “qualifying patient” was defined as “a person who has been diagnosed by a physician as having a debilitating medical condition.” MCL 333.26423(h).¹² Nevertheless, the language of § 8 indicates that “patient” is used in that section to denote a person who has been diagnosed by a physician as having a “serious or debilitating medical condition,” MCL 333.26428(a)(1)-(3), which is consistent with the meaning of “qualifying patient” under the former version of MCL 333.26423(h). In addition, the statute originally defined “primary caregiver” as “a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.”

¹¹ MCL 333.26428 was subsequently amended by 2012 PA 512, effective April 1, 2013. Subsections (a) and (b) are substantively identical.

¹² The current version of the statute, as amended by 2012 PA 512, defines *both* “qualifying patient” and “patient” as “a person who has been diagnosed by a physician as having a debilitating medical condition.” MCL 333.26423(i).

MCL 333.26423(g).¹³ Notably, the definition of “primary caregiver” was framed in the singular, indicating that a patient’s primary caregiver constituted one person.¹⁴ Consistent with the syntax of this definition, § 6 of the act provides that “each qualifying patient can have no more than 1 primary caregiver[.]” MCL 333.26426(d). Section 6(d) also states that “a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.” *Id.* Again,

[w]hen considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words within a statute, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme. [*Jackson*, 487 Mich at 790-791 (footnotes omitted).]

As such, we hold that to be in compliance with the MMMA—and, therefore, to be eligible to raise a defense under § 8 in a prosecution for marijuana-related conduct, see *Hartwick*, 498 Mich at 209—an individual must either be a “patient” himself or the “primary caregiver” of no more than five qualifying patients, as those terms are defined and understood under the MMMA.

We also conclude that the plain language of § 8 clearly indicates that the affirmative defense available under that section is intended to apply only to a prosecution arising out of activities directly related to a defendant’s status as a patient or, if applicable, a defendant’s status as a patient’s primary caregiver. As stated *supra*, § 8(a) provides that “a patient *and* a patient’s primary caregiver, if any, may assert *the* medical purpose for using marihuana as a defense to any prosecution involving marihuana[.]” (Emphasis added.) We believe that the use of the word “and” in this context is conjunctive, joining “patient” and “a patient’s primary caregiver” as two limited, and connected, categories of individuals who may raise a § 8 defense. See *Black’s Law Dictionary* (10th ed) (defining “conjunctive/disjunctive canon” as “[t]he doctrine that in a legal instrument, *and* joins a conjunctive list to combine items, while *or* joins a disjunctive list to create alternatives.”). “The” is a definite article “with a specific or particularizing effect.” See

¹³ The definition, which was amended by 2012 PA 512, now provides:

“Primary caregiver” or “caregiver” means a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. [MCL 333.26423(h).]

¹⁴ While we recognize that “[i]f a statute specifically defines a term, the statutory definition is controlling,” *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013), we find it significant to note that the singular framing of this definition is consistent with the common meaning of “primary.” See *Merriam-Webster’s College Dictionary* (11th ed) (defining “primary” as “first in order of time or development” or “something that stands first in rank, importance, or value”).

Robinson v City of Lansing, 486 Mich 1, 14; 782 NW2d 171 (2010) (quotation marks and citation omitted). Thus, from this language, it is clear that only a patient himself and that patient's primary caregiver may assert a specific patient's "medical purpose for using marihuana" as an affirmative defense. This understanding is confirmed by the fact that the subsequent elements of § 8(a) consistently refer to "*the patient*" and "*the patient's primary caregiver*." (Emphasis added.) Likewise, the Michigan Supreme Court implicitly recognized that a § 8 defense is available only for conduct occurring in the context of an established patient-caregiver relationship when it stated, "A primary caregiver has the burden of establishing the elements of § 8(a)(1) for each patient to whom the primary caregiver is alleged to have unlawfully provided marijuana." *Hartwick*, 498 Mich at 232; see also § 8(a)(3) ("***The patient and the patient's primary caregiver, if any, were engaged*** in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate *the patient's* serious or debilitating medical condition or symptoms of *the patient's* serious or debilitating medical condition.") (emphasis added). Therefore, we conclude that the language employed in § 8 presupposes a relationship between the primary caregiver and the patient, so that the marijuana in the possession of the primary caregiver is cultivated or held by that caregiver, or transferred by the caregiver to the patient, in furtherance of the medical use of the marijuana by that particular caregiver's patient.

Accordingly, we find no basis for concluding that a defendant may assert a § 8 defense in a prosecution for conduct through which he possessed, cultivated, manufactured, delivered, sold, or transferred marijuana to an individual who serves as a primary caregiver for other patients or to a patient whom he did not serve as a *primary* caregiver. Stated differently, a defendant may not raise a § 8 defense in a prosecution for patient-to-patient transactions involving marijuana, caregiver-to-caregiver transactions involving marijuana, or other marijuana transactions that do not involve a patient whom the defendant serves as a "*primary caregiver*," and transactions involving marijuana that do not involve the defendant's own "*primary caregiver*," as those terms are defined and expressly limited under the act. Only conduct directly arising from the traditional patient-primary caregiver relationship is subject to an affirmative defense under § 8.

In so holding, we reject defendant Overholt's claim that a § 8 defense is available not only to a "patient" or "primary caregiver," but also to *any* "person" under § 8(b). Contrary to his characterization of the statute, § 8(b) expressly incorporates § 8(a): "A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person *shows the elements listed in subsection (a).*" MCL 333.26428(b) (emphasis added). Section 8(a), in turn, specifically provides that "a patient and a patient's primary caregiver, if any," may assert the defense, and the elements under § 8(a) repeatedly refer to "*the patient*" and "*the patient's primary caregiver*." Thus, when read in context, it is clear that § 8(b)'s reference to a "person" is, in fact, a reference to a "patient" or a "primary caregiver" who is able to satisfy the elements under § 8(a).

We also reject defendants' claim that caregiver-to-caregiver transactions are permitted under the MMMA. Contrary to defendant Bylsma's claims on appeal, assisting another patient's caregiver is not equivalent to assisting that patient directly for purposes of § 8. In contending that caregiver-to-caregiver transactions are permitted, both defendants rely on § 6(b)(3), which states that in order for a minor to be eligible to be a "qualifying patient" and receive a registry

identification card, the minor's parent must agree in writing to serve as the minor's primary caregiver and control the acquisition of marijuana for the child. MCL 333.26426(b)(3). From this language, they argue that § 6(b)(3)(C) implicitly recognizes that caregiver-to-caregiver transactions are allowable because the section implies that a parent can be a "primary caregiver" without having to personally cultivate marijuana so long as the parent controls how the child "acquires" marijuana from other sources (*i.e.*, other caregivers).

We first reject the application of this subsection in this case because it is undisputed that defendants' charges did not arise from transactions involving the parents of minor patients. Further, the plain language of § 6(b), both when read in isolation and in the context of the act, does not permit a parent, as the primary caregiver of a qualifying patient who is a minor child, to obtain marijuana from other caregivers. See *Hartwick*, 498 Mich at 209-210. Instead, the provision simply requires the parent to control the child's "acquisition," "dosage," and "frequency of the medical use of" marijuana. "Acquisition" is not defined in the MMMA, but it is defined by *Merriam-Webster's Collegiate Dictionary* (11th ed) as "the act of acquiring."¹⁵ "Acquire" is defined as "to come into possession or control of *often by unspecified means*." *Id.* (emphasis added). Accordingly, § 6 (b)(3)(C) only requires that a parent *control* the way in which a child comes into possession or control of marijuana, meaning, in effect, that a child may not serve as his own caregiver and acquire marijuana himself. Further, consistent with the definition of "acquire," the means of acquisition are unspecified here, and we find no basis for concluding that this provision provides general authority for caregiver-to-caregiver transactions under the MMMA.

Therefore, in sum, a defendant who is not formally affiliated with a patient or primary caregiver through the registration process under the MMMA may raise a defense under § 8, but he must first demonstrate that he qualifies as a "patient" or "primary caregiver" as those terms are defined, and limited, under the MMMA and used in § 8. The plain language of the MMMA indicates that a patient can only have one "primary caregiver," and an individual may only serve as a "primary caregiver" for no more than five patients. MCL 333.26423(g) (defining "primary caregiver" prior to the act's amendment); MCL 333.26426(d). Thus, even though the plain language of § 8 does not specifically require a "primary caregiver" to be connected to a "patient" through the registration process under the MMMA, see *Hartwick*, 498 Mich at 209-210, the defense available under § 8 is limited by other provisions in the act, which restrict the number of primary caregivers that a patient can have and restrict the number of patients that a primary caregiver can serve. Moreover, the affirmative defense available under § 8 is necessarily restricted by the fact that no provision under the MMMA permits an individual to provide marijuana to one or more patients of another caregiver—or cultivate, manufacture, or otherwise possess marijuana on behalf of one or more patients of another caregiver—and therefore qualify as a "primary caregiver" for purposes of § 8.

III. APPLICATION

¹⁵ When a term is not defined in a statute, the dictionary definition of the term may be consulted. *Lewis*, 302 Mich App at 342.

For the reasons discussed below, no reasonable juror could have concluded that defendant Bylsma and defendant Overholt were entitled to an affirmative defense under § 8, as the undisputed facts of each case demonstrate that neither of them served as a “primary caregiver” or “patient,” as those terms are defined and limited under the MMMA and used in § 8, when they operated the cooperative growing operation and medical marijuana dispensary that resulted in the charges brought against them in these consolidated, although factually distinct, cases. Accordingly, the trial courts properly denied their motions to dismiss and concluded that they were precluded from presenting evidence of an affirmative defense under § 8 at trial. See *Kolanek*, 491 Mich at 413 (“[If] no reasonable jury could have concluded that [a defendant] satisfied the elements of the § 8 affirmative defense . . . as a matter of law, he is precluded from presenting evidence of this defense at trial.”).

A. DOCKET NO. 317904

In arguing that he is entitled to raise an affirmative defense under § 8, Defendant Bylsma fails to recognize the effect of the statutory definitions of “patient” and “primary caregiver” under the MMMA. He contends that he does not have to be connected to his numerous patients through the MDCH registry to be considered their “primary caregiver” solely based on the fact that “a § 8 defense may be pursued by any defendant, regardless of registration status.” Accordingly, he argues that he is entitled to assert a defense under § 8 as long as he demonstrates that each of his “patients” fulfills all of the elements under § 8(a). However, a *prima facie* showing of each of the elements under § 8(a) is inconsequential unless he first demonstrates that he qualifies as a “primary caregiver” with regard to each patient-caregiver relationship for purposes of § 8. See *Hartwick*, 498 Mich at 232 (“A primary caregiver has the burden of establishing the elements of § 8(a)(1) *for each patient* to whom the primary caregiver is alleged to have unlawfully provided marijuana.”) (emphasis added).

As discussed above, § 8 specifically allows “a patient’s primary caregiver” or “a patient” to assert the affirmative defense of the medical use of marijuana as long as the elements of § 8(a) are established. MCL 333.26428(a), (b) (emphasis added). At the time of defendant’s arrest, the term “primary caregiver” was defined as “a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marihuana and who has never been convicted of a felony involving illegal drugs.” MCL 333.26423(g). Reading this definition in isolation, defendant could arguably constitute a “primary caregiver” for all of the patients that he was assisting with the manufacture or cultivation of marijuana. Importantly, though, many of his “patients”—including Wagner, Eric Bylsma, Woudenberg, Hooper, Keltin, and Roest—already had designated themselves as their own primary caregivers or had designated under the MDCH registry primary caregivers other than defendant. Thus, as a practical matter, defendant could not be the “primary caregiver” of these patients, and there is nothing in the MMMA to suggest that a registered patient may have more than one primary caregiver. Rather, as discussed *supra*, § 6 of the MMMA expresses a clear directive that a qualifying patient cannot have more than one primary caregiver. MCL 333.26426(d). As such, defendant is not entitled, under the plain language of § 8(a), to assert an affirmative defense as it relates to registered patients who had primary caregivers other than defendant through the MDCH registry.

Likewise, because he was cultivating marijuana for other primary caregivers who were not themselves patients and, therefore, had no need for medical marijuana, including Dixon

(Keltin's primary caregiver) and VanderZee (Hooper's primary caregiver), defendant is not entitled to raise a § 8 affirmative defense in connection with that conduct. With regard to those individuals, defendant was not a "caregiver" at all, let alone a "primary caregiver," and, as explained previously, caregiver-to-caregiver transactions are not protected by § 8. Further, even if defendant Bylsma could constitute a "primary caregiver" for purposes of § 8 for the two patients who were serving as their own primary caregivers, the evidence revealed that defendant directly assisted significantly more than 5 "patients," which, again, is not permitted under § 6(d). MCL 333.26426(d).

In sum, defendant is not entitled to raise a § 8 defense because he does not constitute a "primary caregiver," as that term is defined and limited under the act, for each of the individuals to whom, or on behalf of whom, he possessed, cultivated, manufactured, or delivered marijuana. See *Hartwick*, 498 Mich at 232. There is nothing in the language of § 8 that allows a patient to have more than one primary caregiver or that allows a third party to possess marijuana plants on behalf of a registered primary caregiver who intends to supply the marijuana to patients connected to that caregiver. Thus, the trial court did not abuse its discretion in denying defendant's motion to dismiss the charges and precluding him from raising a § 8 defense at trial. See *Bylsma*, 493 Mich at 26.

B. DOCKET NO. 321556

As defendant Overholt expressly concedes on appeal, the evidence produced at the preliminary examination demonstrated that he, as a registered caregiver, sold marijuana to a multitude of caregivers as well as patients who did not have a primary caregiver and, therefore, served as their own caregivers.¹⁶ As such, it is apparent that defendant sold marijuana indiscriminately to any caregiver (or patient) who came into his business with a medical marijuana card. Defendant did not fulfill the definition of "primary caregiver," as that term is defined and limited by the act and used in § 8, with regard to all of those individuals, as an individual is not permitted to have more than one caregiver, and a "primary caregiver" may only serve up to five patients. See *Hartwick*, 498 Mich at 232 (stating that a primary caregiver must establish the elements of § 8(a) with regard to each patient served in order to claim the defense). Further, as explained *supra*, we find no basis for concluding that caregiver-to-caregiver transactions are protected under § 8.

Thus, the trial court did not abuse its discretion in denying defendant's motion to dismiss and preventing him from raising the defense at trial. See *Bylsma*, 493 Mich at 26.

¹⁶ "[A]n evidentiary hearing must be held before trial" if a defendant "assert[s] a § 8 defense by filing a motion to dismiss the criminal charges." *People v Carruthers*, 301 Mich App 590, 598; 837 NW2d 16 (2013); see also *id.* at 612. However, we conclude that dismissal was proper in this case because the undisputed facts demonstrated that defendant Overholt was not entitled to a § 8 defense as matter of law due to the fact that he did not qualify as a "patient" or "primary caregiver" for purposes of § 8, regardless of the fact that the trial court did not hold an evidentiary hearing before it entered its ruling.

IV. CONCLUSION

In Docket Nos. 317904 and 321556, there was no genuine issue of material fact that neither defendant was entitled to raise an affirmative defense under § 8. Thus, the trial courts properly denied defendants' motions to dismiss or, in the alternative, raise an affirmative defense under § 8 at trial. See *Kolanek*, 491 Mich at 412 (“[I]f there are no material questions of fact and the defendant has not shown the elements listed in subsection (a), the defendant is not entitled to dismissal of the charges and the defendant cannot assert § 8(a) as a defense at trial.”).

Accordingly, in Docket No. 317904, we affirm the trial court's order denying defendant Bylsma's motion to dismiss or, in the alternative, permit the assertion of an affirmative defense under § 8 of the MMMA at trial, and remand for further proceedings consistent with this opinion. In Docket No. 321556, we affirm the trial court's order denying defendant Overholt's motion to dismiss and its later ruling that an affirmative defense under § 8 of the MMMA was inapplicable in his case. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey